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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1949

No. 156

THE UNITED STATES, PETITIONER,

vs.

COMMODITIES TRADING CORPORATION, ET AL.

No. 163

COMMODITIES TRADING CORPORATION, ET AL., PETITIONERS,

vs.

THE UNITED STATES

ON WRITS OF CERTIORARI TO THE COURT OF CLAIMS

PETITION FOR CERTIORARI FILED JULY 1, 1949 (Case No. 156)
PETITION FOR CERTIORARI FILED JULY 5, 1949 (Case No. 163)
CERTIORARI GRANTED OCTOBER 24, 1949

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949.

No. 156

THE UNITED STATES, PETITIONER,

vs.

COMMODITIES TRADING CORPORATION, *et al.*

No. 163

COMMODITIES TRADING CORPORATION, *et al.*,

PETITIONERS,

vs.

THE UNITED STATES.

ON PETITIONS FOR WRITS OF CERTIORARI TO THE COURT OF CLAIMS

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In the
Court of Claims of the United States

46611

COMMODITIES TRADING CORPORATION
and IRVING TRUST COMPANY,
PLAINTIFFS,
against
THE UNITED STATES OF AMERICA,
DEFENDANT.

Petition—Filed Oct. 3, 1945

To the Honorable the Court of Claims:

The petition of COMMODITIES TRADING CORPORATION and IRVING TRUST COMPANY respectfully represents, upon information and belief:

1. That plaintiff, COMMODITIES TRADING CORPORATION, is, and at all times hereinafter mentioned it was, a corporation created by and existing under and by virtue of the laws of the State of Delaware, having its principal place of business at No. 80 Broad Street, Borough of Manhattan, New York City; that it has at all times through its officers and agents borne true allegiance to the Government of the United States and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government.

2 2. That plaintiff, IRVING TRUST COMPANY, is, and at all times hereinafter mentioned was, a banking corporation created and existing under and by virtue of the laws of the State of New York, having its principal place of business at No. One Wall Street, Borough of Manhattan, New York City; that it has at all times through its officers and agents borne true allegiance to the Government of the United States and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government.

3. That plaintiffs are the original and sole owners of the claim hereinafter presented, never having sold nor assigned the same, nor any part thereof, nor any interest therein.

4. That at all times hereinafter mentioned, plaintiff, COMMODITIES TRADING CORPORATION, has engaged in the business of holding a stock of Whole Black Pepper for investment.

5. That Public Law 274, 77th Congress, approved October 16, 1941, Ch. 445, as amended by Public Law 507, 77th

Congress, approved March 27, 1942; Public Law 104, 78th Congress, approved June 30, 1943, provides in part as follows:

"That whenever the President, during the national emergency declared by the President on May 27, 1941, but not later than June 30, 1944, determines that (1) the use of any military or naval * * * supplies * * * is needed for the defense of the United States;

3 (2) such need is immediate and impending and such as will not admit of delay or resort to any other source of supply; and (3) all other means of obtaining the use of such property for the defense of the United States upon fair and reasonable terms have been exhausted, he is authorized to requisition such property for the defense of the United States upon the payment of fair and just compensation for such property to be determined as hereinafter provided. * * *. The President shall determine the amount of the fair and just compensation to be paid for any property requisitioned and taken over pursuant to this Act, * * * but each such determination shall be made as of the time it is requisitioned * * * in accordance with the provision for just compensation in the Fifth Amendment to the Constitution of the United States. If, upon any such requisition of property, the person entitled to receive the amount so determined by the President as the fair and just compensation for such property, is unwilling to accept the same as full and complete compensation for such property, he shall be paid 50 per centum of such amount and shall be entitled to sue the United States in the Court of Claims or in any district court of the United States in the manner provided by Sections 24 (20) and 145 of the Judicial Code (U. S. C., 1934 ed., title 28, secs. 41 (20) and 250) for an additional amount which, when added to the amount so paid to him, he considers to be the fair and just compensation for such property. * * *"

6. That the authority conferred upon the President above referred to was duly delegated to the Secretary of War and to the Undersecretary of War. Executive Orders 8942, 9024, 9040, 9138, 9280, 9294, 9322, 9334 and order of Sec. of War, dated Dec. 11th, 1941 and Army Procurement Reg. 14.

4 7. That acting under such statutory powers delegated to him, the Undersecretary of War duly issued "War Department Requisition No. 197" on or about

the 23rd day of May, 1944, directed to 2nd Lt. Paul Barron, Q. M. C., a copy of which is hereto attached marked Exhibit A and made a part of this petition.

8. That on or about the 26th day of May, 1944, said 2nd Lt. Paul Barron, Q. M. C., named in said requisition, did, pursuant to said requisition, take over for the use of the United States or in its interest, 773,201 pounds of Lampong type Whole Black Pepper belonging to the plaintiffs. That at the time of the said taking the said property was located at Hoboken, New Jersey, in the custody of Hoboken Dock Stores, Inc.

9. That plaintiffs had, on the date of such taking, the following right, title and interest in and to such property:

Plaintiff, COMMODITIES TRADING CORPORATION, had full and complete ownership, subject to a lien of plaintiff, IRVING TRUST COMPANY, to secure advances made to plaintiff, Commodities Trading Corporation, by plaintiff, IRVING TRUST COMPANY.

10. That no other persons had any right, title or interest in or to the said property on the date of such taking.

11. That plaintiffs gave notice at once of their claim to said pepper and for compensation for said taking to said 2d Lt. Paul Barron, Q. M. C., Jersey City Quartermaster Depot, referred to in said Exhibit "A"; that said Lt. Barron prescribed the form and time and manner of presenting the claim of the plaintiffs and plaintiffs duly presented and filed its claim for compensation for such taking in the manner and form prescribed and duly verified and within the time fixed for presenting said claim for filing. That in said proof of claim plaintiffs set forth that they were entitled to the sum of $190,000, together with interest at 6% per annum from May 26th, 1944, as an element of just compensation on account of said taking.

12. That thereafter and on or about the 25th day of August, 1944, plaintiffs received notice of a preliminary determination of $50,266.76 as the fair and just compensation for said pepper, and an offer by the War Department of the United States to pay said amount in satisfaction of plaintiffs' said claim which said preliminary determination and offer was dated Aug. 23rd, 1944.

13. That thereafter and on the 22nd day of September, 1944, plaintiffs duly filed with the Quartermaster General, Washington, D. C., their objections in writing to said preliminary determination and their formal rejection of said determination and offer of payment; that said objections were duly verified and were made in the manner and form

All persons having any claim to or interest in any of the above-described property are directed to give notice of their claims at once to 2nd Lt. Paul Barron, QMC, Jersey City Quartermaster Depot, 34 Exchange Place, Jersey City, New Jersey, who will prescribe the form and manner of presenting such claims.

Washington, D. C., 23 May, 1944.

ROBERT P. PATTERSON
Under Secretary of War
By: E. B. GREGORY
Major General
The Quartermaster General

13 *General Traverse—Filed October 22, 1945*

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

A B R
E E E

(s) JOHN F. SONNET
Acting Head, Claims Division

Supplemental Petition—Filed April 7, 1948

On April 7, 1948, plaintiffs filed their Supplemental Petition by leave of Court, which is as follows:

15 In the Court of Claims of the United States

Docket 46611.

COMMODITIES TRADING CORPORATION and IRVING TRUST COMPANY, WILLIAM T. HUNTER, DAVID S. HUNTER, ALICE D. HUNTER, RUFUS H. COLBY, ELIZABETH H. STEVENSON, MARION H. SHUTT, FREDERICK D. TRISMEN, EDWARD L. BLACKMAN and WILLIAM T. HUNTER, EARL A. DARR and PHILIP GILLETT COLE, JR., as substituted Trustees, under Declaration of Trust made by Philip Gillett Cole, dated December 5, 1936 for Katharine Cole, WILLIAM T. HUNTER, EARL A. DARR and PHILIP GILLETT COLE, JR., as substituted Trustees under Declaration of Trust made by Philip Gillett Cole, dated December 5, 1936 for Jane Rulon Cole, WILLIAM T. HUNTER, EARL A. DARR and PHILIP GILLETT COLE, JR., as substituted Trustees under Declaration of Trust made by Philip Gillett Cole, dated December 5, 1936, for Philip Gillett Cole, Jr., and WILLIAM T. HUNTER, EARL A. DARR and PHILIP GILLETT COLE, JR., as substituted Trustees; under Declaration of Trust made by Philip Gillett Cole, dated December 5, 1936, for Katharine Pyle Cole and WILLIAM T. HUNTER, PHILIP GILLETT COLE, JR. and DWIGHT M. MIELS, as Trustees under the Twelfth Clause of the Last Will and Testament of Philip Gillett Cole, Deceased,

PLAINTIFFS,

against

THE UNITED STATES OF AMERICA,

DEFENDANT.

Supplemental Petition

16 *To the Honorable the Court of Claims:*

The Supplemental Petition of the plaintiffs respectfully represents:

1. That plaintiffs COMMODITIES TRADING CORPORATION and IRVING TRUST COMPANY filed their petition with this Court on or about the 14th day of September, 1945, wherein and whereby they asked for just compensation for the requisitioning on or about the 26th day of May, 1944 of approximately 773,201 pounds of Lampong Type Whole Black Pepper by the Under-Secretary of War by War Department Requisition No. 197.

2. That prior to the 1st day of December, 1945, plaintiff, Commodities Trading Corporation, began proceedings to liquidate and dissolve and, being a corporation organized and existing under the Laws of the State of

Delaware, it filed, on or about the 11th day of December, 1945, a unanimous consent of its Stockholders to dissolution, pursuant to and in compliance with the Laws of such State, and on or about the 17th day of January, 1946, a Certificate of its Dissolution was issued by the Secretary of State of the State of Delaware.

3. That pursuant to the Plan of Liquidation and Dissolution of said Commodities Trading Corporation, the assets of the Company which were on hand at the time mentioned in the Paragraph immediately above, were distributed to its Stockholders in kind, in proportion to the stock holdings of each in the total capital stock of the Company.

4. That said distribution included the Cause of Action pending in this Court on the petition of said
17 Commodities Trading Corporation and Irving Trust Company for compensation for the taking by the War Department of the United States of the pepper mentioned in Paragraph 1 above by Army Requisition No. 197 and by reason of said distribution, the parties plaintiff hereinafter named in this Paragraph became the owners, by assignment dated January 22, 1946, of said claim in the following proportions, but subject to lien of plaintiff, Irving Trust Company, for its advances made to said Commodities Trading Corporation.

William T. Hunter	385/11,000ths
David S. Hunter	473/11,000ths
Ruth H. Colby	473/11,000ths
Alice D. Hunter	473/11,000ths
Elizabeth H. Stevenson	473/11,000ths
Marion H. Shutt	473/11,000ths
Frederick D. Trismen	1374½/11,000ths
Edward L. Blackman	1375½/11,000ths

William T. Hunter, Earl A. Darr and Philip Gillett Cole, Jr., as Successor Trustees under Declaration of Trust for Katharine Pyle Cole, dated 12/5/36—550/11,000ths

William T. Hunter, Earl A. Darr and Philip Gillett Cole, Jr., as Successor Trustees under Declaration of Trust for Katharine Cole (Jr.) dated 12/5/36—550/11,000ths

William T. Hunter, Earl A. Darr and Philip Gillett Cole, Jr., as Successor Trustees under Declaration of Trust for Philip Gillett Cole, Jr. dated 12/5/36—550/11,000ths

William T. Hunter, Earl A. Darr and Philip Gillett Cole, Jr., as Successor Trustees under Dec-

laration of Trust for Jane Rulon Cole, dated 12/5/36—550/11,000ths

18 William T. Hunter, Philip Gillett Cole, Jr. and Dwight M. Mills as Trustees of Trust created under Paragraph 12 of the Last Will and Testament of Philip Gillett Cole, Deceased—3300/11,000ths

5. That pursuant to two orders of this Court entered on the 17th and 31st days of March, 1948, respectively, the said parties enumerated in Paragraph 4 have intervened and each of them hereby does intervene and adopt the petition herein and the proceedings heretofore had, and agrees to be bound thereby, and requests that said suit continue in all respects as if said parties and each of them had been a party plaintiff from the beginning.

6. That each of the said new plaintiffs has at all times borne true allegiance to the Government of the United States and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government.

7. That said plaintiffs enumerated in Paragraph 4 are now the sole owners of the claim presented in this action, subject to lien of plaintiff, Irving Trust Company, never having sold or assigned the same, ~~nor~~ any part thereof, nor any interest therein, and that no other person or persons have any right, title or interest in or to this claim except plaintiff, Irving Trust Company, whose claim is set forth directly in the petition filed herein by it and Commodities Trading Corporation.

8. That these plaintiffs enumerated in Paragraph 4 reallege on information and belief each of the allegations set forth in the paragraphs of the original petition,

19 numbered 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17.

9. That each of the persons above named as a Trustee of each of the trusts created by said Philip G. Cole by Declaration of Trust is presently a duly authorized and existing Trustee of each of the said trusts and that neither his authority nor his appointment has been revoked in any case, and that said Hunter, Darr and Cole, Jr. are all of the Trustees of said trusts.

10. That the persons above described as Trustees under the Twelfth Clause of the Last Will and Testament of Philip Gillett Cole, Deceased, are the duly appointed and continuing Trustees thereof and that their Letters of Trusteeship are still in full force and effect and that said Hunter, Cole, Jr. and Hills are all of said Trustees.

11. That proof of the appointment and authority of said Trustees is herewith submitted.

WHEREFORE plaintiffs demand from the defendants the sum of $190,000 together with just compensation for delay in payment measured by the legal rate of interest of 6% per annum.

COMMODITIES TRADING CORPORATION
IRVING TRUST COMPANY
WILLIAM T. HUNTER
DAVID S. HUNTER
ALICE D. HUNTER
RUTH H. COLBY
ELIZABETH H. STEVENSON
MARION H. SHUTT
FREDERICK D. TRISMEN
EDWARD L. BLACKMAN

20 WILLIAM T. HUNTER, EARL A. DARR and PHILIP GILLETT COLE, JR., as Substituted Trustees under Declaration of Trust made by Philip Gillett Cole, dated December 5, 1936 for Katharine Cole, WILLIAM T. HUNTER, EARL A. DARR and PHILIP GILLETT COLE, JR., as Substituted Trustees under Declaration of Trust made by Philip Gillett Cole, dated December 5, 1936 for Jane Rulon Cole, WILLIAM T. HUNTER, EARL A. DARR and PHILIP GILLETT COLE, JR., as Substituted Trustees under Declaration of Trust made by Philip Gillett Cole, dated December 5, 1936, for Philip Gillett Cole, Jr. and WILLIAM T. HUNTER EARL A. DARR and PHILIP GILLETT COLE, JR., as Substituted Trustees under Declaration of Trust made by Philip Gillett Cole, dated December 5, 1936, for Katharine Pyle Cole, and WILLIAM T. HUNTER, PHILIP GILLETT COLE, JR. and DWIGHT M. MILLS, as Trustees under the Twelfth Clause of the Last Will and Testament of Philip Gillett Cole, Deceased.

By EDWARD L. BLACKMAN
Attorney for Plaintiffs
120 Broadway
New York City

Dated: April 6th, 1945.

21 *Duly sworn to by Edward L. Blackman.*
Jurat omitted in printing. (All in italics)

23 *General Traverse to Supplemental Petition—Filed April 13, 1948*

And now comes the Attorney General, on behalf of the United States, and answering the supplemental petition of the claimants herein, denies each and every allegation therein contained; and asks judgment that the supplemental petition be dismissed.

K.M.B. (s) H. G. MORISON
D. B. M. *Assistant Attorney General*
E.T.F.

Argument and submission of case

On November 2, 1948, the case was argued and submitted on merits by Mr. Edward L. Blackman, for plaintiffs, and by Mr. Kendall M. Barnes for defendant.

25 *Special findings of fact, conclusion of law and opinion of the court by Whitaker, J. Dissenting opinion by Madden, J.—Filed April 4, 1949*

Mr. Edward L. Blackman, for the plaintiffs.
Mr. Kendall M. Barnes, with whom was *Acting Assistant Attorney General J. Frank Staley*, for the defendant.

This case having been heard by the Court of Claims, the court, upon the evidence and the report of a commissioner, makes the following

Special Findings of Fact

1. Irving Trust Company is, and at all times hereinafter mentioned was, a banking corporation organized and existing under the laws of the State of New York, having its principal place of business at 1 Wall Street, New York, N. Y.

Plaintiff, Commodities Trading Corporation hereinafter sometimes referred to as "Commodities," was incorporated under the laws of the State of Delaware on June 23,

1933. Subsequent to the bringing of this action, Commodities began proceedings to liquidate and dissolve. On or about December 11, 1945, Commodities filed a unanimous consent of its stockholders to dissolution, in accordance with the laws of the State of Delaware, and on January 7, 1946, a certificate of dissolution was issued by the State of Delaware. Under the laws of the State of Delaware such proceedings for dissolution continue the corporation powers for a period of three years for the purpose of winding up its affairs, and the proof in this case indicates that this three-year period began January 7, 1946.

26 Pursuant to the plan of liquidation and dissolution of Commodities, the assets of the company which were on hand were duly distributed to the stockholders in kind, in proportion to the stock holdings of each, of the capital stock of the corporation. The said distribution included the instant cause of action pending in this Court.

The names of these stockholders, and the fractional part of this claim distributed to each of them, were as follows:

William T. Hunter—385/11,000ths.
David S. Hunter—473/11,000ths.
Ruth H. Colby—473/11,000ths.
Alice D. Hunter—473/11,000ths.
Elizabeth H. Stevenson—473/11,000ths.
Marion H. Shutt—473/11,000ths.
Frederick D. Trismen—1374½/11,000ths.
Edward L. Blackman—1375½/11,000ths.
William T. Hunter, Earl A. Darr, and Philip Gillett Cole, Jr., as Successor Trustees under Declaration of Trust for Katharine Pyle Cole, dated 12/5/36—550/11,000ths.
William T. Hunter, Earl A. Darr, and Philip Gillett Cole, Jr., as Successor Trustees under Declaration of Trust for Katharine Cole (Jr.) dated 12/5/36—550/11,000ths.
William T. Hunter, Earl A. Darr, and Philip Gillett Cole, Jr., as Successor Trustees under Declaration of Trust for Philip Gillett Cole Jr., dated 12/5/36—550/11,000ths.
William T. Hunter, Earl A. Darr, and Philip Gillett Cole, Jr., as Successor Trustees under Declaration of Trust for Jane Rulon Cole, dated 12/5/36—550/11,000ths.
William T. Hunter, Philip Gillett Cole, Jr., and Dwight M. Mills as Trustees of Trust created under Paragraph 12 of the Last Will and Testament of Philip Gillett Cole, Deceased—3300/11,000ths.

By reason of said distribution the parties named above became the owners by assignment dated January 22, 1946, of the instant claim in the proportions set out, but subject to the lien of plaintiff Irving Trust Company for advances made to Commodities. The said parties are the lawful owners and holders of said assets or claims.

2. Pursuant to two orders of this Court entered on the 17th and 31st days of March 1948, respectively, the
27 parties enumerated in the preceding finding have intervened as parties plaintiff in this case and have adopted the petitions herein and the proceedings had in this cause, and they agree to be bound thereby, and they request that said action continue in all respects as if each of the parties had been a party plaintiff from the beginning.

Each of the persons above named as a trustee of each of the trusts created by Philip G. Cole by Declaration of Trust is presently a duly authorized and existing trustee of each of the said trusts and neither his authority nor his appointment has been revoked in any case, and said Hunter, Darr and Cole, Jr., are all of the trustees of said trusts.

The persons above described as trustees under the twelfth clause of the Last Will and Testament of Philip Gillett Cole, deceased, are the duly appointed and continuing trustees thereof and their letters of trusteeship are still in full force and effect, and said Hunter, Cole, Jr., and Mills are all of said trustees.

3. On or about May 26, 1944, the defendant, acting through the War Department and pursuant to the Act of October 16, 1941 (55 Stat. 742), as amended, duly requisitioned and took possession of 759,750.88 pounds of Lampong type whole black pepper stored at Hoboken Dock Stores, Inc., Hoboken, New Jersey, in the name of Commodities Trading Corporation. Copies of such requisition were, on the same day, served upon the plaintiffs, Commodities Trading Corporation and Irving Trust Company.

4. On the date of such requisition the 759,750.88 pounds of whole black pepper were owned by plaintiff Commodities Trading Corporation, subject to the lien of plaintiff Irving Trust Company, to whom the pepper had been pledged as security for advances theretofore made by it to Commodities. This lien, covering this pepper and other pepper formerly owned by Commodities, has now been reduced to about $53,000.

5. These 759,750.88 pounds were part of a holding of 16,153,000 pounds of whole black pepper then owned by

Commodities. At the outbreak of the war on December 7, 1941, Commodities had approximately 21,000,000 pounds of whole black pepper, 4,000,000 pounds of which had
28 been sold for future delivery. This pepper was delivered during the early months of 1942, and Commodities made very few sales thereafter from its inventory. This pepper had been accumulated by Commodities over the period from 1933 to the date of the requisition, the highest inventory having been in the neighborhood of 25,000,000 pounds in 1938.

6. On June 26, 1944, the War Department's "initial compensation officer" offered the plaintiffs, Commodities and Irving Trust Company, as compensation for such pepper, the ceiling price established under Maximum Price Regulation No. 52 issued by the Office of Price Administration, as that regulation existed on the date of requisition. Such offer was rejected by both of said plaintiffs.

On or about July 13, 1944, the plaintiffs, Commodities and Irving Trust Company, duly filed with the Commanding Officer, Jersey City Quartermaster Depot, a proof of claim for such pepper dated that day. In said proof of claim plaintiffs, Commodities and Irving Trust Company, claimed the sum of $190,000 as just compensation for the 773,201 pounds of pepper which were then believed to have been the accurate number of pounds requisitioned.

7. On August 23, 1944, the Chief Requisitioning Officer, Office of the Quartermaster General, made a preliminary determination of fair and just compensation for such pepper in the amount of $50,266.76. Such determination was computed at the ceiling prices for the pepper requisitioned, as established by Maximum Price Regulation No. 52, as it existed on the date of the requisition. Prompt notice of such determination was given to the plaintiffs, Commodities and Irving Trust Company.

On or about September 22, 1944, the plaintiffs, Commodities and Irving Trust Company, duly filed objections to such preliminary determination with the Chief Requisitioning Officer, Office of the Quartermaster General, who affirmed his determination by letter dated November 22, 1944.

Under date of September 26, 1945, an award of compensation for such pepper was made by the Acting Under Secretary of War in the amount of $52,808.28, of which $2,541.52 represented compensation for delay in payment com-
29 puted at the rate of four percent per year. The principal amount of the award was computed in the

same manner as the preliminary determination of compensation. Plaintiffs, Commodities and Irving Trust Company, were unwilling to accept such award as full compensation for such pepper, and on November 27, 1945, fifty percent of the amount of such award, or $26,404.14, was paid to said plaintiffs.

8. Whole black pepper is grown in Sumatra, French Indo-China, and India, the Lampong type being grown only in Sumatra. In March 1942, when this country was cut off from these producing areas (except India) by Japanese military successes in the Pacific, there were about 78,000,000 to 100,000,000 pounds of whole black pepper in the hands of importers in the United States (about three years' supply), approximately 17,000,000 pounds of which were held by Commodities Trading Corporation. On September 30, 1943 the holdings of Commodities continued at approximately 17,000,000 pounds of black pepper.

9. On December 11, 1941, the Office of Price Administration issued a ceiling price on whole black pepper. This was done by Price Schedule No. 52, which established a maximum price of 6.75 cents a pound ex dock or warehouse in New York City for Lampong type whole black pepper.

During the years 1936 to 1940, both inclusive, the average annual prices for Lampong type whole black pepper in New York City, computed from daily spot prices throughout the period, expressed in cents per pound, had been:

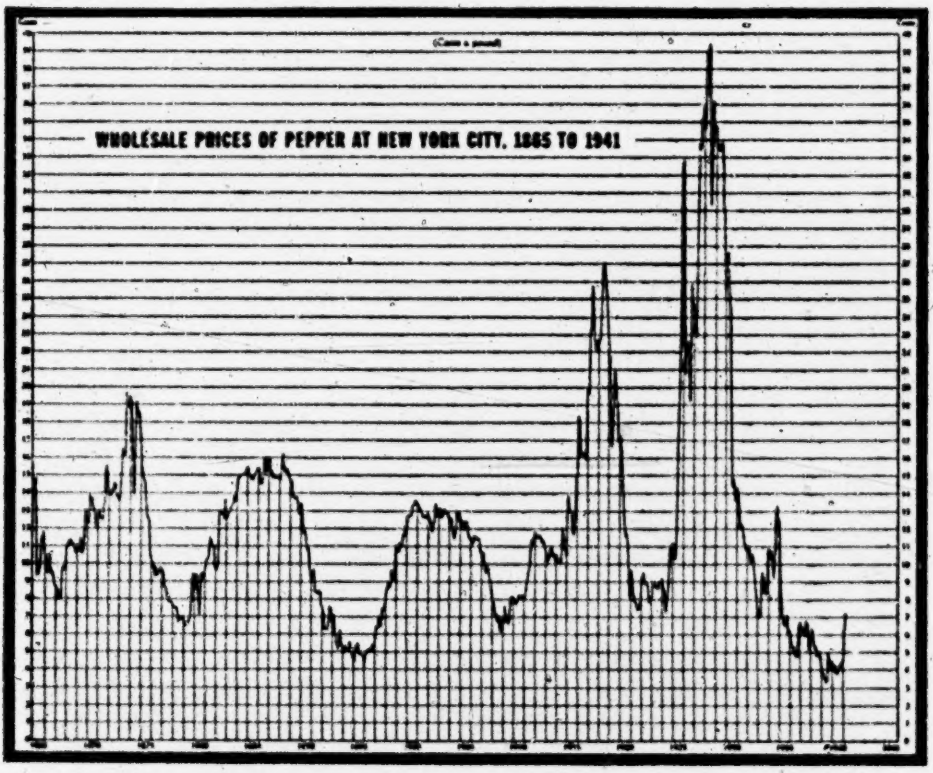
	Cents		*Cents*
1936	5.5	1939	4.0
1937	6.1	1940	4.1
1938	5.4		

During the year 1941, through the month of November, the average monthly prices, expressed in cents per pound, had been:

	Cents		*Cents*
January	4.1	July	5.9
February	4.5	August	6.1
March	6.2	September	6.0
April	6.3	October	5.8
May	6.9	November	5.8
June	5.8		

During the first week of December 1941, the average daily price was 5.78 cents a pound.

There is set forth below a graph showing the range of wholesale prices of pepper from 1865 to 1941:



The average price of Lampong black pepper over a period of 50 years preceding the war was 13½ cents per pound.

10. The ceiling price of 6.75 cents a pound for whole black pepper was approximately the fair market price as of December 11, 1941.

11. During the period immediately subsequent to the issuance of the price schedule of 6.75 cents per pound, and prior to February 3, 1942, prices for Lampong type whole black pepper did not reach 6.75 cents per pound, the price established as the maximum by the price schedule. During the month of January 1942, for example, the highest
31 daily price was 6.45 cents per pound, with the average for the month of 6.41 cents per pound. These sales were made by certain traders in pepper, importers, and grinders, particularly those who held smaller lots because they realized it would be impossible for them to obtain a greater price than the ceiling, and therefore they sold rather than hold the pepper indefinitely and incur the cost of holding. There were large stores of whole black pepper

in the country at the time of the imposition of the 6.75-cent ceiling price.

12. On February 3, 1942, the Office of Price Administration amended this price schedule, reissuing it on that date as Revised Price Schedule No. 52. Under the schedule as amended the ceiling price of Lampong type whole black pepper was set at 6.50 cents per pound, plus labor charges paid the warehouse for putting the pepper in storage and taking it out, and plus warehouse storage charges for not more than 30 days.

The aggregate of these charges would, on the average, raise the ceiling price for pepper which had been in warehouse for 30 days or more to about 6.63 cents a pound.

Under this same price schedule it was provided that the maximum price for pepper sold for export exceed the domestic price by no more than ten percent.

13. On May 8, 1942, the War Production Board issued two orders entitled Conservation Order M-127 and Supplementary Order M-127-a, to conserve the supply of certain spices, including black pepper, by restricting their sale and delivery. Under these orders, deliveries of black pepper by packers and receipts of black pepper by wholesalers and industrial users, were limited to 100 percent of their average monthly deliveries or receipts during the year 1941. By Supplementary Order M-127-a, issued by the War Production Board on September 25, 1942, this quota was reduced for the last three months of 1942 to 90 percent.

By Executive Order 9280, issued by the President on December 5, 1942, the authority to exercise priority powers with respect to food was transferred from the War Production Board to the Secretary of Agriculture. Pursuant to this delegation of authority, the Secretary of
32 Agriculture on February 8, 1943, issued an order known as Food Distribution Order 19, entitled "Conservation and Distribution of Spices." This order, among other things, delegated to the Director of Food Distribution the authority to establish quotas for the delivery, receipt and use of "restricted spices," including black pepper. This authority was exercised by the Director of Food Distribution on the same day by the issuance of Food Distribution Order 19-1, establishing a quota on the delivery, receipt and use of black pepper during the first quarter of 1943, and during each succeeding quarter unless otherwise authorized, of 90 percent of the amount delivered, received or used during the corresponding quarter of 1941. By amendment to

Food Distribution Order 19.1 issued on April 26, 1943, this quota was reduced to 60 percent for the second quarter of 1943 and succeeding quarters, and by amendment issued February 29, 1944, this quota was further reduced to 40 percent for the first quarter of 1944 and succeeding quarters.

14. Notwithstanding the foregoing measures taken to conserve this country's supply of black pepper, the inventory in the hands of importers had been reduced to about 28,000,000 pounds on September 30, 1943, of which approximately 17,000,000 pounds were held by Commodities. Between that date and the date of the requisition on May 26, 1944, very little whole black pepper was sold out of these inventories.

15. After December 1941 when the Government imposed price ceilings on pepper, there was no free and open market in the United States for pepper. All sales thereafter were subject to ceiling prices until August 1946, when ceiling prices were removed. Upon the establishment of price ceilings the traders and importers rapidly disposed of their stocks to wholesalers and grinders. However, there was progressively less activity from approximately the middle of 1942 as importers, other than Commodities, disposed of their holdings, and replenishment of their stock had become impractical because of war conditions.

16. There was connected with the Office of Price Administration a board of advisers relating to commodities. The board of advisers for spices, including pepper, composed of leading men in the pepper industry, importers, brokers and dealers, recommended that the ceiling price for pepper be increased; that the trade would be able to keep this commodity on what it believed would be a fair level of between 20 and 30 cents per pound; that if the prices were kept at the original levels of 6.5 or 6.75 cents per pound the market would be apt to rebound to a much higher level as of the date of decontrol.

33

17. After the removal of ceiling prices in August 1946, an active market in Lampong whole black pepper came into existence. Such pepper was sold in quantity at 50 to 60 cents a pound and upward; and at 40 cents a pound and upward for future delivery in 3 or 4 months.

18. During the years 1943 and 1944, which was during the period of shortage of pepper and demands therefor, spice dealers manufactured and sold in substantial quantities synthetic or imitation pepper. Imitation pepper was

made up of about one-fourth or one-fifth real ground black pepper, the remainder being ground parched corn, wheat, cotton seed hulls, or other neutral agent.

This imitation pepper sold for approximately 16 cents a pound. During this time the ceiling price on whole black pepper was 6.5 cents a pound. The ceiling price for ground black pepper was then 12½ cents per pound.

19. In October 1944, subsequent to the requisition of the pepper in this case, the ceiling price of whole black pepper was increased by the Government from 6.5 cents to 10 cents per pound. There was no pepper being offered in the United States at the 6.5 cents ceiling price in any month of the year 1944 before October. Prior to increasing the ceiling price, the Office of Price Administration and the Department of Agriculture had obtained an informal agreement from Commodities to sell about seven million pounds of its pepper at the 10-cent price, and after the price was so increased in October 1944 Commodities did sell approximately seven million pounds of pepper at that price.

In March 1946, following similar negotiations between Commodities and the Government, the ceiling price of whole black pepper was increased to 16 cents per pound and thereafter Commodities sold its remaining inventory of pepper, amounting to about three million pounds, at that price.

34 These increases were made in order to obtain a distribution of pepper which was not obtainable at the lower ceiling prices, and were made only after negotiations by the Office of Price Administration with Commodities and other dealers in pepper, to the end that large quantities of pepper would be sold upon such increase in ceiling price.

20. In June 1945 plaintiffs, Commodities and Irving Trust Company, sold approximately 124,000 pounds of whole black pepper to consignees at Puerto Rico. There were various sales at an average price of 14.19 cents a pound.

The 10 cents ceiling price was still effective in the United States, including Puerto Rico, but the regulations provided that the exporter could charge his usual prewar export markup, plus 25 percent of that markup in addition to the ceiling price. These sales were alongside steamer at New York and did not include freight.

21. On October 4, 1943, Commodities had filed a petition seeking amendment of price schedule 52 relating to pepper.

The amendment desired was the addition of a provision allowing persons who sold pepper ex warehouse to add storage charges computed at the rate of 1/24 cent per pound per month "for the average number of months beyond one month during which the pepper held by the seller at the date of this amendment shall have been owned and stored by him."

By letter dated March 11, 1944, the Price Administrator denied this petition.

22. On or about October 25, 1943, Commodities received a request from the War Department for a quotation on one million pounds of whole black pepper. It replied under date of November 1, 1943, as follows:

> Replying to yours of October 25th, this company is not desirous of making any sales of black pepper whatever at this time and it is unfamiliar with the Federal specifications referred to in your letter.
>
> However, if the Army is in need of pepper we will offer to sell you, subject to obtaining prior approval of the O. P. A., under procedural regulation No. 6, by amendment to R. P. S. No. 52, or by any other properly authorized approval, 1,000,000 pounds of our Lampong whole black pepper at 9¾¢ per lb., which is less than the average investment cost to this Company, including carrying charges, of the Lampong whole black pepper which it now holds.

On or about November 8, 1943, Commodities filed with the Office of Price Administration an "Application for Adjustment of Maximum Prices for Commodities or Services Under Government Contracts or Subcontracts." In this application Commodities stated that it had sold 2,300 tons of whole black pepper during the early part of 1942, closing out future contracts that it had entered into on the New York Produce Exchange in 1941, and that between January 1, 1943, and the date of the application it had sold 98,267 pounds of whole black pepper for $6,387.36, or an average of 6.5 cents a pound. It requested approval of the unit price of 9¾ cents a pound on the proposed sale of one million pounds to the War Department. No formal action was taken on this application by the Office of Price Administration since, while the matter was still pending before it, and on or about December 7, 1943, the pepper in question was requisitioned by the War Department. This requisition is now the subject of litigation in this court in *Commodities Trading Corporation* v. *United States*, No. 47588.

23. Next to Sumatra, British India is the largest producing country of black pepper. However, British India uses approximately 75 percent of the pepper it raises and exports the balance.

Prior to 1944 and in 1944, the Allied Food Commission did allocate 10,000,000 pounds of pepper for the United States. During 1944 the price per pound of whole black pepper in India fluctuated, as follows:

	Cents		*Cents*
February	21.25	July	19.71
March	21.20	August	19.40
April	18.55 to 19.00	September	16.90
May	20.00	October	19.76
June	20.99		

These prices included insurance and freight paid to New York. In other words they were prices delivered in New York.

36 However, because Office of Price Administration Regulation, R. P. S. 52, provided that no one could purchase or import pepper at higher than the maximum prices established in that schedule, i. e., 6.5 cents per pound, American importers were unable to take advantage of the allocation of British pepper.

24. The pepper requisitioned by the Government in May 1944 is identified by lot numbers from purchasers by Commodities from October 1933 to January 1936. Commodities purchased this pepper at various times during the above period, the purchases amounting to 5,805 bags or 773,201 pounds net, at an invoiced cost of $53,143.13, or an average of $0.0621046 per pound.

The pepper requisitioned by defendant in May 1944, had been carried by plaintiff for periods averaging 9 years and 4½ months. The total cost of the pepper to Commodities is as follows:

	Pounds	*Per Pound*	*Total Cost*
Original cost	773,201.00	$0.0621046	$53,143.13
Shrinkage	13,450.12		
Cost of pounds delivered in May 1944	759,750.88	.069948	53,143.13
Carrying charges:			
Labor, handling at (average) per bag of .04422			$ 256.71
Cartage, etc., at (average) per bag of .076			442.31
Storage, at (average) per bag per month of .03			19,591.62

Bank interest, commissions, cables, exchange, etc., amounting to approximately 2.75% per annum	13,672.99
Insurance, at premiums of approximately $4.368 per $100 value for 9 years 4 months	3,377.34
Taxes, on basis of average stored pepper during period 1936 to 1943 inclusive	1,076.67
Total direct costs	91,560.77
Allowance for general administrative expenses at 1% per annum during carrying period, of 9.33% on original cost of $53,143.13	4,958.25
Total costs plus estimated administration expense, or an average cost per pound of $0.127	96,519.02

The foregoing costs do not include any amount for officers' salaries, supervision or purchasing expenses
37 to Commodities during the period the pepper was purchased and held. No interest is computed upon costs of any of the carrying charges but only on Commodities' original costs.

25. Whole black pepper is not perishable and will last unimpaired in quality for several decades.

26. The pepper vine which produces Lampong pepper is planted in Sumatra on land cleared out of the jungle. The plant does not bear any fruit for the first four years, during which constant cultivation is required, but then has a bearing period of from ten to fifteen years with an average bearing period of about eleven years. The effect of high prices for pepper is usually to stimulate planting, while low prices retard new plantings and sometimes lead to neglect of established vines. The 1926 Lampong crop was the smallest in history, with the result that prices reached the highest levels ever recorded; this greatly stimulated planting, leading to a period of very low prices some five years later. This in turn reduced plantings. The consequent reduction in crop was first noticeable, so far as its effect on prices was concerned, in 1937, 1938, and 1939, and by 1941 had had sufficient effect in raising prices so that new plantings might have been made in 1942. If there had been no war in 1941, it is probable that production of pepper in Sumatra would have decreased each year after that until about 1945 or 1946, when the new plantings would have begun to bear.

This decreased supply during the period from 1942 to 1945 or 1946 would have had effect in raising pepper prices in the United States.

27. The fair value of 759,750.88 pounds of pepper, the subject of this action, was on May 26, 1944, the sum of $113,962.63, or 15 cents a pound.

28. Plaintiffs, Commodities and Irving Trust Company, were paid on November 27, 1945, the sum of $26,404.14, which represented one-half of the award made by the Acting Under Secretary of War on September 26, 1945, or the sum of $25,133.38, plus one-half of additional compensation for delay in payment, or the sum of $1,270.76.

Conclusion of Law

Upon the foregoing special findings of fact, which are made a part of the judgment herein, the court concludes as a matter of law that the Commodities Trading Cor-
38 poration, or its distributees, are entitled to recover, and it is therefore adjudged and ordered that Commodities Trading Corporation, or its distributees, are entitled to recover of and from the United States a total of one hundred thirteen thousand nine hundred sixty-two dollars and sixty-three cents ($113,962.63), plus compensation for delay in payment computed at four (4) per cent per annum on one hundred thirteen thousand nine hundred sixty-two dollars and sixty-three cents ($113,962.63) from May 26, 1944, to November 27, 1945, less the amount paid plaintiffs on the latter date of twenty-six thousand four hundred four dollars and fourteen cents ($26,404.14), and plus a further sum for delay in payment computed at four (4) per cent per annum on eighty-eight thousand eight hundred twenty-nine dollars and twenty-five cents ($88,829.25) from November 27, 1945, until paid.

From the amount awarded the lien of plaintiff Irving Trust Company shall first be satisfied, and the balance shall be paid to the distributees of the Commodities Trading Corporation named in finding 1 in accordance with their respective interests as therein set out. Judgments are rendered accordingly.

Opinion

WHITAKER, *Judge*, delivered the opinion of the court:

Plaintiffs sue the defendant for what they deem just compensation for the requisition on May 26, 1944, of 759,750.88 pounds of whole black pepper. Plaintiffs claim that 22 cents a pound is just compensation. The defendant

allowed them $50,266.76, plus an amount for delay in payment. The amount allowed was computed at 6½ cents a pound, which was the ceiling price established by the Office of Price Administration.

We are of the opinion that this ceiling price is not the measure of just compensation in this case. Pepper is not perishable; it can be stored for many years without deterioration. This is an essential difference between this case and the case of *United States* v. *Felin*, 334 U. S. 624.

In that case three justices of the Supreme Court expressed the opinion that the ceiling price was the measure of just compensation for the requisition of perish-
39 able goods. Two justices were of opinion that this was not the measure of just compensation, and four justices expressed no opinion on this subject one way or the other. Mr. Justice Reed, who wrote the concurring opinion in which the view was taken that the ceiling price was the measure of just compensation, made it plain in his opinion that they were dealing in that case with perishable property. In the following quotation from his opinion we have underscored his use of the word "perishable":

> It would be anomalous to hold that Congress can constitutionally require persons in the position of the respondent to sell their *perishable* property to the general public at a fixed price or not to sell to anyone[1] and later to hold that the Government must pay a higher price than the general public where it requisitions the *perishable* property because of a replacement cost, greater than the fixed price. It is true that the United States by exercising its power of requisitioning compelled the respondent to sell it; but the compulsion to sell to the general public at ceiling prices was hardly less severe. The choice was between sales at the fixed price or, at the best, economic hibernation and, at the worst, economic extinction. The two situations are so parallel that the constitutionally established maximum price may, under the circumstances here, be properly taken as the measure of "just compensation." That lawfully fixed market price determines what the *perishable* article can be sold for or its market value in any real sense. It gives to the condemnee any profit for increased value in his hands and takes nothing from him that he could lawfully obtain

[1] See *Yakus* v. *United States*, 321 U. S. 414; *Bowles* v. *Willingham*, 321 U. S. 503.

since consequential damages for loss of good will cannot be obtained. Such maximum price is "just compensation."[2]

Even if the ceiling price is the measure of just compensation for perishable property, we do not think it can be said to be the measure when nonperishable property is requisitioned. This is so because the owner of nonperishable property has the right to hold it until after restrictions are removed, and then sell it. He is not required to sell at the ceiling price, whereas the owner of perishable property must sell at the ceiling price or let his property perish.

40 We have several times held that, in determining just compensation, we must take into account the plaintiff's right to hold its property until restrictions on its disposition are removed. *Seven-Up Bottling Co.* v. *United States*, 107 C. Cls. 402; *Kaiser* v. *United States*, 108 C. Cls. 47; *Adler Metal Products Co.* v. *United States*, 108 C. Cls. 102; *Pantex Pressing Machine Co.* v. *United States*, 108 C. Cls. 735.

The Government in time of war has the undoubted right to say to the citizen, if you want to sell your property you must not sell it for more than a certain price; but the Government has no right to take the property and pay for it no more than this fixed price, unless that price justly compensates the owner, taking into consideration his right to hold his property until he can get for it whatever anyone is willing to pay.

This so-called "retention value" is particularly applicable in this case. Plaintiff, Commodities Trading Corporation, was not a trader in pepper; it was rather an investor in pepper. It began buying pepper in 1933, and by Pearl Harbor Day in 1941 it had accumulated a stock of 21,000,000 pounds. It was accumulating this stock in the expectation that there would be a considerable rise in the price of pepper, at which time it expected to dispose of it.

There is set forth in finding 9 a graph showing the rise and fall in the price of pepper over a period of about 75 years. This shows a marked fluctuation in the price of it in fairly regular cycles. There is a good reason for this. Practically the entire supply of pepper comes from Sumatra, French Indo-China, and India. The pepper vine grows in the jungle. Before planting, the jungle must be cleared

[2] Cf. *Nortz* v. *United States*, 294 U. S. 317, 328-29.

and it must be kept cleared. When prices are high the natives plant pepper; but when prices decline, they neglect their vines and allow them to be destroyed by the encroachment of the jungle. The resulting scarcity causes the market to rise. Prices stay high for several years because it takes about 4 years for a pepper vine to bear.

Commodities Trading Corporation bought most of its pepper at low prices in anticipation of the rise in price which the history of the industry showed must inevitably come. Except for the fact that the Government requisitioned its pepper, Commodities would have held it
41 until the next rise in price and then would have sold it. It has been denied the right to do this by the Government's requisition. As it turned out, the price of pepper shot up to more than 40 cents immediately after restrictions had been removed, and it went on up to 75 and 80 cents.

A very great increase in price was inevitable upon the removal of restrictions. The price of pepper had greatly declined beginning in 1935 and 1936, and was still down when the ceiling price was fixed. This resulted in but little planting and in the neglect of the growing vines, which resulted, in turn, in a scarcity. In addition to this, the Japanese invasion of Indo-China and Sumatra further reduced the supply. These factors made it inevitable that there would be a very great increase in the price after restrictions were removed. Had plaintiffs' pepper not been requisitioned there was no doubt they could have continued to hold it and could have gotten for it a price far in excess of the ceiling price fixed by the Office of Price Administration.

The determination of what is just compensation for the taking of this pepper is extremely difficult. It must be determined as of the time of the taking, and at that time there was no free market; in fact, no pepper was offered for sale in the United States during the year 1944, in which year it was requisitioned, until in October of that year when the ceiling price was increased from 6½ cents to 10 cents a pound. Prior to October 1944 Commodities, who had about 17,000,000 pounds of pepper, which was more than one-half of the total supply in the country, had agreed with the Office of Price Administration that it would put on the market 7,000,000 pounds of its pepper if the price was increased to 10 cents. When the market was increased to 10 cents, Commodities sold some 7,000,000 pounds, as it had agreed to do.

Later, in the spring of 1946, the ceiling price was further raised to 16 cents, and Commodities sold its remaining stock at this price.

The sales at 10 cents a pound by Commodities were not made from choice, but rather because the Government had made strong representations to Commodities that it should not withhold from the market its supply of pepper. Sales at this price were below cost. Our finding 24 shows
42 that the average cost to Commodities by the spring of 1944, including labor cartage, storage, interest, insurance, taxes, and a small allowance for administration expense, was 12.7 cents. We do not think that the price of 10 cents, at which Commodities sold some 7,000,000 pounds, is the measure of just compensation.

However, in June of 1945 Commodities apparently voluntarily sold in Puerto Rico 124,000 pounds at an average price of 14.19 cents a pound. This was after the requisition, but since we are undertaking to arrive at the "retention value" of the pepper, we think it and certain other transactions occurring after the requisition are relevant.

Taking into consideration Commodities' costs and the price it undoubtedly could have secured for its pepper had it been permitted to hold it until after restrictions had been removed, and also these sales at 10 cents, at 14.19 cents, and at 16 cents, we conclude that 15 cents a pound is just compensation. This allows plaintiff a little more than 2 cents a pound profit, and is 1½ cents a pound higher than the average price at which pepper had sold over the last 75 years.

The Commodities Trading Corporation was dissolved on January 7, 1946, but under the laws of the State in which it was incorporated it is empowered to continue to exercise the corporate powers necessary for the winding up of its affairs. Under the plan of dissolution the assets of the corporation, including this claim against the United States, were distributed to the stockholders, whose names appear below in the fractional parts set opposite their names:

William T. Hunter—385/11,000ths.
David S. Hunter—473/11,000ths.
Ruth H. Colby—473/11,000ths.
Alice D. Hunter—473/11,000ths.
Elizabeth H. Stevenson—473/11,000ths.
Marion H. Shutt—473/11,000ths.
Frederick D. Trismen—1374½/11,000ths.
Edward L. Blackman—1375½/11,000ths.

William T. Hunter, Earl A. Darr, and Philip Gillett Cole, Jr., as Successor Trustees under Declaration of Trust for Katharine Pyle Cole, dated 12/5/36—550/11,000ths.

43 William T. Hunter, Earl A. Darr, and Philip Gillett Cole, Jr., as Successor Trustees under Declaration of Trust for Katharine Cole (Jr.) dated 12/5/36—550/11,000ths.

William T. Hunter, Earl A. Darr, and Philip Gillett Cole, Jr., as Successor Trustees under Declaration of Trust for Philip Gillett Cole, Jr., dated 12/5/36—550/11,000ths.

William T. Hunter, Earl A. Darr, and Philip Gillett Cole, Jr., as Successor Trustees under Declaration of Trust for Jane Rulon Cole, dated 12/5/36—550/11,000ths.

William T. Hunter, Philip Gillett Cole, Jr., and Dwight M. Mills as Trustees of Trust created under Paragraph 12 of the Last Will and Testament of Philip Gillett Cole, Deceased—3300/11,000ths.

At the price of 15 cents a pound, the stockholders of the Commodities Trading Corporation, named above, are entitled to recover the sum of $113,962.63, plus compensation for delay in payment computed at 4 per cent annum on $113,962.63 from May 26, 1944 to November 27, 1945, less the amount paid plaintiffs on the latter date of $26,404.14, and plus a further sum for delay in payment computed at 4 per cent per annum on $88,829.25 from November 27, 1945, until paid.

The foregoing judgment will be distributed to plaintiffs in proportion to their respective interests as set forth above, subject to the lien of plaintiff Irving Trust Company for whatever balance remains at the time of settlement. This balance will be paid to the Irving Trust Company.

HOWELL, *Judge;* and LITTLETON, *Judge*, concur.

Dissenting Opinion

MADDEN, *Judge*, dissenting.

I am unable to agree with the court's decision. We have here, apparently, the naked question whether a ceiling price for a commodity, which ceiling price was lawfully imposed by the Government, is the proper measure of just compensation for that commodity, when some of it is taken by the Government for public use. I think it is the proper measure.

On December 11, 1942, the Government imposed a
44 ceiling price of 6.75 cents per pound on whole black pepper of the kind herein involved. There was then an enormous supply of such pepper in the country, and the market price was lower than the imposed ceiling. On February 3, 1942, the ceiling price was revised to 6.50 cents per pound, plus certain warehouse and labor charges. During the period when the first ceiling price was in effect, the market price was lower than 6.50 cents per pound. This would seem to show that the new ceiling price was reasonable, and this was probably why the plaintiff, Commodities Trading Corporation, which owned a large fraction of all the whole black pepper in the country, did not resort to the Emergency Court of Appeals, which was, by Section 204 (d) of the Emergency Price Control Act of January 30, 1942, 56 Stat. 23, 32, 33; 50 U. S. C. Appendix 924 (d), given exclusive jurisdiction to review the legality of price ceilings. The ceiling price then became the maximum lawful market price. Many millions of pounds of pepper were sold by private owners to private buyers, and at that price. The plaintiff chose not to sell any of its pepper. By September 30, 1943, the total supply in the country in the hands of importers was down to about one-third of what it had been when the 6.50 cents ceiling was imposed in 1942. No doubt this reduction of supply would have resulted in a greatly increased price in an uncontrolled market. But the market, in pepper, and in most other commodities, was not uncontrolled. If, in the changed circumstances, there was something unlawful about keeping the same ceiling price that had been imposed earlier, there was, I suppose, a new opportunity to resort to the Emergency Court of Appeals for relief. The plaintiff did not resort to that court. In May of 1944 the War Department requisitioned a small fraction of the pepper which the plaintiff owned, and in settlement offered the ceiling price for it, which price the plaintiff rejected as being less than just compensation.

We do not have here a case where the Government, with a view to taking, or diverting to its own use, the whole supply of a commodity, first sets a ceiling price and then requisitions the property. The ceiling price here in question was imposed upon a commodity in general use, and of which the Government ultimately took only a relatively small quantity. In the numerous sales and purchases be-
45 tween private persons, the ceiling price was the market price. It was not a free market, any more than

the market for steel or wheat or gasoline or shoes was a free market. But it was the market, and was as lawfully the market as is a market strongly affected by custom duties or excise taxes or railroad rates or other governmentally imposed conditions. For one citizen to sell to another at a price above the ceiling was made a criminal offense. Yet, the court decides, if the Government itself needs for a public use, such as to feed the Army, some of the commodity, it is constitutionally required to ignore the control which it has imposed to prevent the public economy from being destroyed, and must discriminate against those who obeyed its law and let their goods go into the channels of trade, by paying to the ones who held their goods out of the market some two and one-half times as much as the price at which other persons sold their property. I get the impression from all this that the basic though unconscious philosophy must be that control of prices in wartime is really beyond the power of the Government, yet must be tolerated because it would cost many billions to compensate all those who are financially harmed by the controls. Since it costs considerably less to pay the relatively few persons whose property is requisitioned by the Government, not the price which in fact, their property would have brought in the market, but the price which they would have been able to get if the scarcities resulting from the war had existed and the controls made necessary by the war had not existed, they are given that artificial and speculative price. The result of this discrimination against those who let their products flow into the channels of trade in wartime, in spite of the necessary controls, will be to encourage hoarding in the hope that the Government's necessities may compel it to take the property by requisition.

I would hold that the amount awarded to the plaintiffs for their pepper was just compensation. The decision of the Circuit Court of Appeals for the Seventh Circuit, in *United States* v. *Sanitary District of Chicago*, 149 F. 2d 951, was, as I read it, in accord with what I would decide.

JONES, *Chief Judge*, took no part in the decision of this case.

47 *Judgment of the Court.*

At a Court of Claims held in the City of Washington on the 4th day of April, A. D., 1949, judgment was ordered to be entered as follows:

Upon the special findings of fact, which are made a part of the judgment herein, the court concludes as a matter of law that the Commodities Trading Corporation, or its distributees are entitled to recover.

It is Therefore Adjudged and Ordered that Commodities Trading Corporation, or its distributees, are entitled to recover of and from the United States a total of one hundred thirteen thousand nine hundred sixty-two dollars and sixty-three cents ($113,962.63), plus compensation for delay in payment computed at four (4) per cent per annum on one hundred thirteen thousand nine hundred sixty-two dollars and sixty-three ($113,962.63) from May 26, 1944, to November 27, 1945, less the amount paid plaintiffs on the latter date of twenty-six thousand four hundred four dollars and fourteen cents ($26,404.14), and plus a further sum for delay in payment computed at four (4) per cent per annum on eighty-eight thousand eight hundred twenty-nine dollars and twenty-five cents ($88,829.25) from November 27, 1945, until paid.

From the amount awarded the lien of plaintiff, Irving Trust Company shall first be satisfied, and the balance shall be paid to the distributees of the Commodities Trading Corporation named in finding 1 in accordance with their respective interests as therein set out. Judgments are rendered accordingly.

49 *Proceedings after Judgment*

On May 20, 1949, the defendant filed an application for transcript of record on petition for writ of certiorari, together with the such additional parts of the record, to be certified.

On May 31, 1949, the plaintiff filed additional portions of the record proposed for certification, as requested by plaintiff.

On June 22, 1949, the court filed an order settling and approving the transcript of record as follows:

Order Settling and Approving Transcript of Record on Petition for Certiorari.

The within transcript prepared from the original record in this court in the above-styled case having been proposed in part by defendant and in part by plaintiff as that portion of the record material to the errors assigned in the petition of defendant and plaintiff for writ of certiorari,

and such transcript having been considered and found to be an accurate statement of the portions of the original record material to the errors assigned, the same is, this 22nd day of June, A. D., 1949, hereby settled and approved.

By the Court
Marvin Jones
Chief Judge

51 Other parts of the Record Deemed by Defendant and by Plaintiff to be Material to the Errors Assigned Accompany this Record under Separate Cover.

53 Clerk's Certificate to foregoing transcript omitted in printing.

In the Supreme Court of the United States

54 *Stipulation as to Printing Record*

Subject to this Court's approval, it is hereby stipulated and agreed by and between counsel for the respective parties hereto that, for the purpose of the petition for a writ of certiorari, the printed record may consist of the following:

(1) Respondents' petition in the Court of Claims.
(2) General traverse.
(3) Supplemental petition.
(4) General traverse to supplemental petition.
(5) Argument and submission of the case.
(6) Special findings of fact, conclusion of law; and opinion of the Court of Claims, including the dissenting opinion of Judge Madden.
(7) Judgment of the Court of Claims.
(8) Proceedings after judgment.
(9) Clerk's certificate.
(10) This stipulation.

It is further stipulated and agreed that in the event that the petition for a writ of certiorari is granted, the printed record shall consist of the foregoing and such additional portion of the record certified by the Court of Claims as the parties may designate.

It is further stipulated and agreed that either of the parties hereto may refer in its brief to the record

55 filed in the Supreme Court of the United States, including any part thereof which has not been printed.

PHILIP B. PERLMAN
Philip B. Perlman
Solicitor General
Counsel for Petitioner

EDWARD L. BLACKMAN
Counsel for Respondents

☆ U. S. GOVERNMENT PRINTING OFFICE 84603 O—49 No. 9 1949

[fol. a] **IN THE UNITED STATES COURT OF CLAIMS**

[Title omitted]

Additional Portions of Record Designated by Defendant—
Filed May 20, 1949

1. TRANSCRIPT OF TESTIMONY

(p. 358)

MURRAY SQUIRES, a witness produced on behalf of the defendant, after having been duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

Direct examination.

By Mr. Barnes:

1 Q. Mr. Squires, will you please state your full name?
A. Murray Squires.
2 Q. And what is your age?
A. I am 43.
3 Q. And what is your occupation?
A. I am a green coffee broker representing foreign shippers.

[fol. b] (p. 359)

8 Q. Mr. Squires, were you formerly connected with the Office of Price Administration?
A. Yes, I was.
9 Q. During what period of time?
A. From April 20, 1942, to January 10, 1947.
10 Q. During that period, did you have any connection with the price ceilings established by the Office of Price Administration on whole black pepper?

* * * * * * *

A. During the period from April 20, 1942 to approximately the middle of 1943, I was in charge of green and roasted coffee only. Subsequent to that date I became interested in the enforcement and establishment of prices on black pepper.

* * * * * * *

(p. 368)

43 Q. Mr. Squires, when was the first formal protest received from any person as to the level of ceiling prices which were established for whole black pepper?

Mr. Blackman: Objected to as irrelevant and immaterial and not within this witness' knowledge.

A. My recollection of this is that it was filed October 4, 1943.

[fol. c] Mr. Blackman: By Commodities Trading Corporation?

(p. 369)

The Witness: By Commodities Trading Corporation.

(p. 371)

50 Q. To clarify this a little bit, would the document which you refer to as the formal reply, Mr. Squires, be the

(p. 372)

letter signed by the Administrator of the OPA which was mailed to the plaintiff on March 11, 1944?

A. Yes, that is the official document denying the petition.

51 Q. And you have a copy of that letter there in front of you?

A. Yes, I do.

Mr. Barnes: I would like to offer this in evidence as "Defendant's Exhibit 3."

(Whereupon, the document offered in evidence was marked by the reporter "Defendant's Exhibit 3.")

(p. 374)

56 Q. Did Commodities Trading Corporation appeal from this rejection to the Emergency Court of Appeals?

A. I don't recall.

Mr. Blackman: We did not.

[fol. d] Copy

DEFENDANT'S EXHIBIT 3

Helen R. Dirtrich

Mailed March 11, 1944.

Commodities Trading Corporation
80 Broad Street
New York, New York

Re: Petition for amendment to RPS 52—Pepper. Docket No. 3052-2

Gentlemen:

Your petition for amendment to RPS 52, filed October 4, 1943, has been given careful consideration in this Office. I regret to inform you that it must be denied.

Your petition shows that your proposed amendment is essentially designed to bring about an increase in the maximum price of Lampeng Black pepper owned by you. You state that you are not a dealer in pepper in the ordinary sense but that you hold 17 million pounds, large inventories of which you began to acquire in 1933 and the supply of which you have kept up, making a few sales and a few purchases over the intervening years prior to price control. You contend that the present ceiling price is substantially less than your actual investment in the pepper including carrying charges. You specifically request that by amendment provision be made to add to the present maximum price the cost of actually putting the pepper into warehouse plus 1/24 of 1 cent per pound per month for the average number of months beyond one month during which the pepper held by you at the date of the proposed amendment, shall have been owned and stored by you.

In considering your proposed amendment and after a meeting with your representatives and others engaged in the pepper trade, an accounting study of your inventory was made. While it appears that in your petition you evaluated your inventory on the basis of purchases and sales of particular lots, the accountants from this Office also made an evaluation on the basis of "first in" and "first out". In that method of evaluation the invoice costs were taken from your purchase records and are based upon actual landed

weights with all charged paid into storage. The sums used in the evaluation for storage, insurance, interest and weighing out represent estimated costs computed at the actual rates paid for the services rendered. Loss of weight for the entire inventory was computed at the actual rate of losses suffered on that pepper delivered by you to the U. S. Army on December 7, 1943.

On this basis of evaluation the estimated cost of your inventories on February 3, 1942 is found to be $.055156 per [fol. e] pound. It would appear that sales might have been made by you on that date at the ceiling price of 6.5¢ per pound ex dock plus permissible charges or 6.63¢ per pound which would have afforded you a gross margin of profit of 20-35/100 per cent. As to sales which ~~might have been~~ made on October 4, 1943, the date of the filing of your petition, it has been estimated that the additional carrying charges from February 3, 1942 to October 4, 1943 would have been $.006232 per pound, and the above gross margin of profit would be reduced by 8-13/100 per cent. Stated in another way your margin of profit for sales at the ceiling price on February 3, 1942 would have been $.0112 or 16-92/100 per cent and on October 4, 1943, $.0049 or 7-53/100 per cent. In view of the fact that the trade reports that a reasonable profit is 10 per cent, the ceiling price established on February 3, 1942 appears as fair and equitable to you. Furthermore, you realize that the regulation was designed to take care of the industry as a whole and at the time of its issuance it was found to be generally fair and equitable. Of course, you held your pepper following the original issuance of the regulation fully recognizing the fact that the regulation did not provide for further carrying charges. Grinders have been ready to purchase since the issuance of the regulation. Under all these circumstances it has been determined that it would be unfair to give you the increase in maximum prices which you request.

Again, I wish to assure you that your petition has been denied only after the most careful consideration.

Sincerely, Chester Bowles, Administrator.

RFrazier:hf.

[fol. 1] IN THE UNITED STATES COURT OF CLAIMS

[Title omitted]

Additional Portions of Record Designated by Plaintiffs

1. TRANSCRIPT OF TESTIMONY

(p. 2)

ISIDOR B. KATZ, a witness produced on behalf of the plaintiffs, having been first duly sworn by said Commissioner, was examined, and in answer to interrogatories, testified as follows:

Direct examination.

By Mr. Blackman:

Q. 1. Mr. Katz, what is your business?

A. Import and export business, principally foodstuffs.

Q. 2. Do you do business individually or as a partnership or firm?

A. As a corporation. I am president of the Katz American Company, Inc.

[fol. 2] A. I established this company here thirty years ago, so I was immediately officer and president from its start.

(p. 3)

A. I have branch offices in Indonesia, Cuba, Brazil, and an associate company in Holland, where I really originally came from.

[fol. 3] Q. 12. Have your dealings in spices included dealings in Whole Black Pepper?

A. Yes, sir.

Q. 13. What kinds of black pepper have you dealt in?

A. All kinds, principally Lampong.

Q. 14. Where is that produced?

A. Sumatra.

Q. 15. Anywhere else?

A. No.

(p. 4)

Q. 16. Where are the other kinds of pepper produced?

A. You have pepper coming from French Indo-China, which is called Saigon pepper. You have pepper coming

from British India, which is called Malabar pepper, Alleppy and Tellicherri.

Mr. Rood: Those are three kinds?

The Witness: No, the Malabar is divided into those two kinds. We call it either Malabar as a general name, or divide it into Alleppy or Tellicherri.

Q. 17. How do those peppers compare one with the other so far as quality and so far as price are concerned?

A. The pepper coming from British India in general is a little cleaner and grinds a little lighter than the pepper coming from other places, but the difference is very small. The reason is that in British India they wash the pepper and get all the dust out, whereas in the other districts they still leave a little bit in.

[fol. 4] Q. 18. How about the price?

A. The price varies. Sometimes the price of British India is higher; at other times it is not.

Q. 19. When you say the price is higher, how much higher is it? What spread is there customarily?

Q. 19. (Continuing): Price wholesale in New York City.

A. Price wholesale in New York City, there is very little difference.

Q. 20. What kind of pepper is used almost entirely in New York City and in the United States?

A. The Lampong black pepper is by far the largest quantity.

Q. 21. Have you bought and sold pepper in the countries you have mentioned over a great many years?

A. Yes, sir.

Q. 22. Continuously and up to the present time?

A. Over the entire world.

[fol. 5] Q. 33. Has it been necessary for you in the conduct of your business to be familiar with the prices of Whole Black Pepper in various parts of the world?

A. Yes, sir.

Q. 34. In what part?

A. Everywhere.

Q. 36. What are the principal trading centers for Whole Black Pepper and what have been such principal trading centers during the last thirty years?

(p. 7)

A. Before the first World War, 1914, the principal trading centers were in London and Rotterdam, Amsterdam.

When the first World War came those trading centers were changed on account of the fact that Europe was cut off to some extent from the Orient, and consequently the market at Singapore and Batavia and New York came in much nearer connection to each other. Therefore, the trading center of Europe was changed to Batavia, Singapore and New York.

Q. 37. What is whole Black Pepper? Just describe it.

[fol. 6] A. Whole black pepper is the berry of the pepper vine.

Q. 38. Is it the natural state in which the pepper is produced before anything is done to it?

A. No. The berry grows on the vine just like grapes grow in bunches, and then when the fruit is ripe, they are taken off and they are dried, mostly in the sun, and then you get your black pepper.

Q. 39. That is what we call Whole Black Pepper?

A. That is right.

* * * * * * *

[fol. 7] (p. 14)

Q. 60. Was the ceiling price that was fixed for Whole Black pepper ever withdrawn entirely?

A. Yes, sir.

Q. 61. When?

A. Yes, sir, in August of this year; August 1946.

Q. 61. Since that ceiling has been removed was there an active market in Whole Black Pepper in the City of New York and throughout the United States?

A. Yes, sir, although not too big, because the stocks were very small, but there was not a regular open market then.

Q. 62. What is the market price in New York today?

(p. 16)

A. The price for spot pepper today is around 80 cents per pound, whereas you can buy pepper which is afloat or coming in the near future at all prices from 40 to 80 cents.

Q. 63. What was the market price immediately following the lifting of the ceiling in August?

[fols. 8-9] A. The spot price in New York for immediate delivery was around 50 to 60 cents per pound.

Q. 64. Is Whole Black Pepper, including Lampong Black pepper, consumed in other parts of the world besides the United States?

A. Yes, sir.

(p. 17)

Q. 65. In what countries?

A. All over the world.

Q. 66. What was the situation in the world outside of the United States with respect to supplies of Whole Black Pepper during the year 1944?

A. Pepper was very scarce everywhere.

* * * * * * *

[fol. 10] Q. 76. Was there any physical obstacle for getting pepper from the United States to these South American countries in 1944.

A. The only pepper that could be exported was with an export license.

[fol. 11] Q 81. That is, the United States undertook to supply or to permit the supply of certain quantities of pepper to these South American countries?

A. Yes, sir.

Q 82. Were there restrictions on the price at which that pepper could be sold?

A. By the exporter, yes. By the buyer in the foreign countries, no.

Q 83. What was the result of that situation? Did you sell pepper down in Brazil at the price fixed by the O. P. A. for export pepper?

(p. 21)

A. Yes, sir. I may say, if you allow me to give you a description of my recent trip, I was just last August in Brazil, and one man jokingly told me, he said "You people [fol. 11½] in New York have enriched the grocery trade of Brazil to a very large extent with the supplies of pepper which you have given to this country."

[fol. 12] Q 88. You stated that a large amount of pepper was produced in India, I believe?

A. That is correct.

Q 87. Is India the next largest producing country of black pepper next to Sumatra?

A. Yes, sir.

(p. 26)

A. The price fluctuated during that year 1944 in India from 22 cents high—do you want to have them by months?

Q 98. By months.

A. I have here quotations on different dates: February, 21¼, and 22.10 for Tellicheri pepper, that is the other.

I had better stick to the Alleppy black, which is the cheapest.

March, 21.20. April 18.55 to 19.

C. i. f. New York. That is, cost, insurance and freight paid to New York.

At cents per pound, yes.

The Witness: I am stating the price at which India was offering pepper for shipment to New York during that period. We as importers—if I may qualify—I say, we as importers, if there had been no restrictions such as ceiling prices and as far as import regulations were concerned, you would have bought at that time from India one hun- [fol. 13] dred per cent at those prices, freight paid New York. The only expenses which we would have on that would be to remove the merchandise from the dock and put them again in the street.

Mr. Rood: You are stating that those were offerings in India which you know about yourself?

The Witness: Yes, sir.

Mr. Rood: But which were subject to obstacles, subject to obstruction by legal controls of the various governments?

The Witness: Only of the American Government.

Mr. Rood: No, you stated earlier that there was an obstruction in India.

The Witness: But I also stated that a few thousand tons were also put aside for the United States if we could have come together with the United States Government about the price.

(p. 28)

Q 99. When you said "we", you mean the import trade?
A. The import trade, sure.

Mr. Rood: And the only legal obstructions were obstructions of the United States Government, not the Government of India?

The Witness: Correct.

Mr. Rood: Or the Combined Food Resources Board.

The Witness: The Combined Food Board was willing to request a few thousand tons of pepper.

[fol. 14] A. (Continuing) Where was I. March. I said April 18.55 to 19.08. May, 20.99. June, same price. July, 19.71. August, 19.40. September, 16.90. October, 19.76.

Q 100. What is the price at which Indian pepper is being offered today?

A. 34 to 36 cents, c. i. f. New York.

Q 101. And for how long has that been the price?

A. For the last few weeks; that is, for shipment October-November, from British India.

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(p. 33)

Q 120. What was the reason, Mr. Katz, for that tremendous difference in price between an average of thirty-odd cents in the latter part of the last decade, or the 1920 decade, and the price of five cents or thereabouts that you gave for the latter part of the 1930 decade?

A. The reason was that in 1926 we have had the smallest crops of Lampong pepper in history. It just happened that I was out there in the Indies that year, and they had never seen such a small crop. And on account of that

(p. 34)

prices, of course, rose tremendously, and then plantation and production started to increase also tremendously, because the natives saw the wonderful price of 40 cents a pound, and that was very much tempting. So everybody [fol. 15] started to plant pepper trees, and on account of that we have suffered ten years later in a tremendous overproduction, which also was bigger than we ever expected.

Q 121. What was the effect of that overproduction on planting?

A. That, just as we had abnormally high prices in 1926, 1927 and 1928, we got abnormally low prices in 1936, 1937, 1938 and 1939.

Q 122. And as the abnormal prices from 1927 to 1930 produced a tremendously abnormal amount of plants, what was the effect of the abnormally low prices of five or six years ago, or six or eight years ago?

A. I should say that I cannot give you a full reply on that, because the war interrupted with our observation of that consequence. They started already to neglect, to some extent, and the replants were very much neglected during that period, but I have not been able to give you a full reply to that question on account of not having looked behind the curtain for about five years.

Q 123. Not having been able to look behind.

A. That is right.

• • • • • • •

(p. 36)

Q 128. You stated that ceiling prices were fixed for black pepper in December 1941. Were ceiling prices fixed for other spices at that time?

[fol. 16] A. No.

Q 130. Were ceiling prices fixed for other spices than black pepper later?

A. Yes, sir. In May, 1942.

Q 134. How did the ceiling price that was fixed for Lampong black pepper compare with the avearge price of Lampong black pepper over a long period of years, say

(p. 37)

thirty years or fifty years or seventy-five years?

A. The average price for Lampong pepper for fifty years preceding the war was about—I can look it up there, but I think I am right—was about 13½, whereas the ceiling was fixed at 6½, which is about fifty per cent below the average price of the last fifty years.

Q 135. Take the other prices of the other spices. Please name some of the more important of those spices?

A. Cinnamon, clove, mustard, ginger. I can go into large and small quantities. Cinnamon is one of the biggest. Then you have red peppers, nutmeg and mace. Paprika is also a rather fairly large use.

Q 136. How did the ceiling prices that were fixed for those spices compare with the average prices of those spices for a number of years prior to the war?

A. All ceiling prices were considerably higher than the average prices before the war. Certain articles like cinnamon went up as much as six or seven hundred per cent. Nutmeg, went up about four hundred per cent. Mace went up about one to two hundred per cent. I could go on that way, but I think that gives you an idea. Ginger went up two hundred per cent.

Q 137. Is that illustrative of what happened in the whole line of prices on spices?

A. Yes, sir.

* * * * * * *

[fol. 17] Q. 158. Do you know what the conditions were throughout the entire world with respect to supplies of Whole Black Pepper in March, April, May and June, 1944?

A. Yes, sir. Supplies were very small everywhere.

Q. 159. For how long had that been the case?

A. Since the East Indies became engaged in war with Japan and they were cut off from the rest of the world, which was in the early part of 1942.

The Witness: Everywhere, in all countries, the reserve stocks were very small and not sufficient for the consumption, because there was no replacement during the time of

(p. 46)

occupation by the Japanese.

Q. 160. At the time of the outbreak of the war, there were large stocks in the United States, were there not?

A. There were large stocks in the United States, yes. You spoke about other parts of the world.

Q. 161. Yes. The United States had nearly all the pepper there was?

A. By far the largest part, yes.

A. By far the largest part of all pepper which there was in the world.

[fol. 18] Q. 162. Mr. Katz, black pepper is not consumed generally by the person who actually consumes it in the form of Whole Black Pepper, is it?

A. It is ground.

Q. 165. In 1944, in March, April and May of that year, was it entirely feasible for a holder of Whole Black Pepper to realize ten cents or more for his pepper by perfectly legal means and without violating the O.P.A. ceiling?

(p. 47)

The Commissioner: You mean ten cents profit?

Mr. Blackman: Yes.

A. No. Ten cents sales price, do you mean?

Q. 166. Ten cents on the net sales price.

A. Ten cents on the net price, yes. For some of them, yes.

Q. 167. Please explain that.

A. Some people who had business in the grocery line could qualify as distributors of food products. The O.P.A. in the general regulations distinguishes between regular people who were just only importers or people who were also what they called distributors, and they had different price regulations for those.

[fol. 19] Any distributor could apply to the O.P.A. for the permission to sell the pepper in ground form.

As long as you asked the question, I think I might say that we applied for such permission and we did receive it

and were permitted to sell pepper in ground form instead of in whole form at that time, and in that way we could realize about ten cents per pound for our pepper.

Q. 168. And the ceiling price on ground pepper was approximately 12 cents or better?

A. That is correct.

* * * * * * *

Q. 173. Mr. Katz, what has been the effect of the World War and the Japanese occupation of Sumatra, upon the present capacity of the world to produce pepper?

A. The pepper production has suffered greatly. I do not know yet to what extent. The pepper vines in the East Indies have suffered. I do not know again to what extent. But, in any case, the production will be much smaller that it has been before the war.

[fol. 20] Q. 174. Is pepper a commodity which must be used within a reasonable period of time or will it keep indefinitely?

A. Whole pepper keeps indefinitely. Ground pepper should be used quicker.

Q. 175. You spoke a moment ago about the possibility of getting imports from India. Did you yourself actually

(p. 49)

obtain some Indian pepper within the last year or two?

A. Yes, sir.

Q. 176. Please state the circumstances.

A. As I said before, this country received allocations from the Combined Food Board for certain quantities of pepper from British India. As I also said, there have been lots of discussions about bringing in this pepper for domestic consumption, and we did not succeed in that in our different meetings in Washington on account of the fact that the price in India was higher than the price here. Finally, the Government was considering the idea of paying the difference in subsidies or any other way in order to bring it in anyhow.

So that part of the allocation was not used in those years. There was another part of the allocation, which was this time for the exporters who could sell in the Western Hemisphere, on account of the fact that our country had taken upon itself also the feeding of the Western Hemisphere with any of the food adequate.

The New York export trade had acquired during the years 1936 to 1939, a very large part of the export trade to [fol. 21] South America on account of the big market which we had here in New York; and consequently, the Combined Food Board recognized that if some of this pepper in British India was going to be released for South America,

(p. 50)

it should be distributed through the regular distributing channels, which was the New York export trade.

Consequently, where we were prevented—I mean, the trade was prevented—from making use of the Combined Food Board allocation for domestic consumption, inasmuch as the ceiling price was preventing—that there was nothing to prevent the bringing in of British Indian pepper, sell it to the exporters at the full market price in British India, and permit the exporters to resell it in South America.

As I stated before, the O.P.A. rules also limit the profit of the exporters, and for this merchandise the O.P.A. made an exceptional ruling and permitted the Government, in this case represented by the Commodity Credit Corporation, to buy this pepper in British India at the full market price in British India, to sell it to the exporter here at that same price, to permit the exporter to pay that price for that pepper at that full price, and then to permit that exporter also to sell that pepper in South America at any price which he was willing to sell it at. That pepper arrived here. That was bought by the Government——

Q. 177. When?

A. About 300 tons, and that was bought during the year 1945, and it arrived here and was distributed by the ex- [fol. 22] porters and shipped to South American countries.

(p. 51)

Q. 178. Did you take part in that transaction?

A. Yes, sir.

Q. 181. That is, based on the volume of business that you were doing before the war as compared with all the other exporters?

A. That is right. We had about 40 or 45 per cent.

Q. 182. What price did you pay the Government for that pepper?

A. We paid the Government 23½ cents for that pepper.

Q. 183. And what did you sell it for?

A. I do not know, I can't object against questions like that. It is really a trade secret, I should say. As long as it has been done—it was legal, of course; it was permitted by the O.P.A. The prices were between 36 cents per pound and one dollar per pound.

Q. 184. Did you get as much as one dollar for some of it?

(p. 52)

A. For some of it, yes.

[fol. 23] Q. 185. In South American countries?

A. Yes, sir.

Q. 186. Where they had no ceilings there?

A. Yes, sir.

Q. 187. Were there any changes in the conditions between May 26, 1944, and the time of this transaction that you speak of which would have made the price that you could obtain for pepper any lower in May than you actually got; would you have been able to do just as well in May 1944?

A. Yes, sir. As far as——

A. (Continuing:) I said yes, with some modification. I could have sold at 36 cents, which is, as I said, the minimum price which I could get for a large part of it in May 1944. The higher price which was obtained in some places may have been caused by the fact that—in fact, it was in

(p. 53)

Brazil, I may say, where the ceiling was in May 1944, 36 cents, and where the ceiling was removed at the end of 1944 on account of which in 1945 the prices in Brazil were [fol. 24] much higher than they were in 1944.

Q. 188. Were those things that you have just mentioned the only differences in conditions that in your opinion would have caused the difference in price between May 1944 and the time of this transaction which you mentioned?

A. Yes, sir.

Q. 189. In addition to this transaction that you have mentioned, was Indian pepper actually brought into the United States and sold in the United States?

A. Yes, sir.

Q. 190. Please state the circumstances of that.

A. The United States Government, or the Quartermaster's Department, needed additional pepper in the year 1945, after those lots in the beginning here were requisitioned, and the negotiations had been going on between the

Department of Agriculture who had the pepper business in its hands and the Quartermaster's Department and all other Government bureaus.

Then it was decided that the small stocks of pepper which were available still in the United States should not be used further by the Army. It should be kept for the moment; that it would be possible to distribute them in

(p. 54)

civilian life where it was highly necessary, to give pepper to the civilian population.

Consequently, the Department of Agriculture, with the assistance again of the Commodity Credit Corporation, bought in British India—and I do not know the exact [fol. 25] quantity—a certain quantity of several hundred tons of pepper, and the Army was going to hand over here to the grinders of pepper. The grinders had to grind them up for the Army and pack them in the regulation packing which the Army needs, and then the Army would use that for its own use. Also, that pepper was bought by the Commodity Credit Corporation at prices of around, let us say, between 21 and 23 cents. I have not seen their books, so I do not know exactly. I know only from what I was told in Washington.

When the war was finished, a certain quantity of this pepper—and I know it was a few hundred tons—arrived in the United States. The Army, of course, did not need it any more because the war with Germany at that time was over, and consequently the Department of Agriculture went back to the Army and obtained its permission to release that pepper for civilian consumption in the United States. The Department of Agriculture then permitted the grinders and manufacturers of this country to buy this pepper from them and use it for civilian consumption.

(p. 55)

Q. 191. What price did they permit them to buy it at?

A. I am not fully posted about that price, Mr. Blackman.

Q. 192. You did not take part in it?

A. I did not take part on that. It was direct from Government to the grinders.

Q. 193. That privilege was restricted to grinders?

A. That is right.

[fol. 26] Q. 196. What is the average annual consumption per capita in the United States of black pepper, or what was the consumption?

A. Before the war, it was about a quarter of a pound per capita.

(p. 56)

Q. 197. Does that include the amount that is used by the meat packers?

A. Yes, sir.

Q. 198. They used about how much of that?

A. Oh, it is difficult to say exactly, but in general we mostly say that the industry buys about half and that the housewife buys about the other half, if that is correct.

Q. 199. So that the individual consumption per capita in the home is about one-eighth of a pound?

A. That is correct.

[fol. 27] Q. 201. Well, what do these little containers that you speak of customarily sell for?

A. The pepper for the housewife is mostly sold in 2-ounce cans, 2-ounce containers. Before the war it was also sold sometimes in three ounces and four-ounce containers, but when it became a little scarce, the two-ounce container has been more predominant.

The price of the two-ounce container was in most retail stores ten cents, and remained ten cents for a very long period. Although really speaking, it could sell—in some of the chain stores who did their own grinding and did not

(p. 57)

have the jobbing mark-ups and the general mark-ups which others had, it could be sold as low as 6½¢.

A. (Continuing:) Then, of course, such a package—I am not familiar with the exact cost of the packing, because that is not my business, so I could not give you full information on that subject. One of the manufacturers might be able to give you better information there. But in any case you can understand that such a little two-ounce package containing only two ounces of pepper, contains a tremendous amount of labor. It contains a very large expense in the can itself, and the pepper itself is only a small part of the net cost value of such a can; and, therefore, any increase in the price of pepper does not increase the value of that [fol. 28] same can with the same percentage, but only with the percentage of the contents of the pepper itself.

Q. 202. As a matter of fact, those little cans customarily sold for ten cents over a long period of years

(p. 58)

without regard to what the price of pepper was?

A. That is right.

Q. 203. Is white peper consumed by the world as well as black pepper?

A. Yes, sir.

Q. 204. Is it consumed in the United States?

A. Yes, sir.

Q. 205. Is it a different product or does it come from the same plant?

A. It comes from the same plant.

Q. 206. There is just a little different treatment of the berry?

A. The skin is taken off before it is dried and then it is wiped.

Q. 207. Can the skin be taken off of black pepper and have it made into white pepper?

A. You mean the regular black pepper that we have here?

Q. 208. Yes.

A. It could, and it is done sometimes. Not as well when it is in fresh condition. In fresh condition it is much easier.

[fol. 29] (p. 59)

Q. 211. They decorticate the black pepper?

A. That is correct.

Q. 212. Change it into white?

A. That is right.

[fol. 30] William T. Hunter, a witness produced on behalf of the plaintiffs, having been first duly sworn by said Commissioner, was examined, and in answer to interrogatories, testified as follows:

Direct examination.

By Mr. Blackman:

Q. 1. Mr. Hunter, what is your business?

A. Manufacturing. I am a vice-president and director of the Scoville Manufacturing Company, Waterbury, Connecticut.

Q. 4. Are you an officer of Commodities Trading Corporation, one of the plaintiffs in this case?

A. I am.

Q. 5. What officer are you?

A. President.

Q. 6. How long have you been president?

A. About five years.

Q. 7. Prior to your becoming president were you an officer?

A. Vice President.

* * * * * * *

A. About eight years.

Q. 10. Does that go back to the formation of the company?

A. It does.

[fols. 31-32] Q. 13. What, if anything, did you have to do with the organization of Commodities Trading Corporation?

A. Well, I gathered friends prior to the organization and persuaded them to go into this venture.

Q. 15. Will you please state just what the object and scope of the venture was when it was entered into?

A. The object was to take a commitment in the commodity known as black pepper, with the purpose of eventually having a hedge against inflation.

Q. 16. Was the purpose to become regular dealers, like Mr. Katz or other persons in that business?

A. No, just take a commitment and hold that commitment as investors.

(p. 62)

Q. 18. Who did you get to join with you?

A. I got three other people, Mr. Philip G. Cole, former president of the company I was associated with; Frederick Trisiner, who was a treasurer and vice-president of the company, and Edward L. Blackman, attorney.

Q. 19. Have any of those persons ever dealt in pepper before?

A. Not to my knowledge.

* * * * * * *

[fol. 33] Q. 34. It was in no sense a regular commercial undertaking?

A. No.

Q. 35. How much pepper did this company own and have in storage in the United States at the time when the war broke out?

A. About 17 or 18 million pounds. I should say nearer 17 million pounds.

Q. 36. Did the company ever make regular daily or monthly or weekly sales of pepper?

A. No, we did not.

Q. 37. Did it ever have any customers?

A. It did not.

[fol. 34] (p. 89)

X Q. 93. Will you restate, Mr. Hunter, the main purpose that you people had in mind for this corporation?

A. To acquire a position in pepper, mainly black pepper. I say that because we did own some white pepper, but our position was to be maintained in black pepper.

(p. 90)

A. (Continuing:) We would hold it until a time when we could balance up the declining dollar with the advancing commodity price of this pepper.

When the time seemed opportune, and we were getting good advice from people we thought were dependable, we would then sell that commodity and put that into dollars or put the dollars into something else, but it was to maintain a position, a level, with the number of dollars.

We did the same thing in real estate and the same thing with bonds. Those investments turned out very profitably.

(p. 92)

X Q. 103. How did pepper turn out?

A. If our hands had been free, it would have turned out just as well as the real estate and bonds.

X Q. 104. How did it turn out?

A. Well, we don't know yet. I think it will depend somewhat on the outcome of this hearing. We don't know. [fols. 35-37] That is only part of the result of our operation.

X Q. 105. You began accumulating this pepper in 1933, is that right?

A. Yes, in 1933.

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[fol. 38] (p. 113)

Direct examination of Mr. Katz Continued.

By Mr. Blackman:

(p. 115)

Q. 215 Mr. Katz, if we assumed that there had been no price fixed for pepper in December, no ceiling price fixed for pepper in December 1941, but that pepper had been treated exactly as the other spices had been treated, and a ceiling price had been fixed in March or April, 1942, at the market price existing at that time, what in your opinion would have been that level?

Q. 216 The purpose of my question, Mr. Katz, is to find from you what in your opinion would have been the market price of Whole Black Pepper Lampong in New York City

(p. 116)

in March, April or May 1942, if there had bee no ceiling price fixed prior to that time?

The Witness: According to my idea you would have received somewheres between 30 and 40 cents a pound.

[fol. 39] (p. 117)

By Mr. Blackman:

Q. 219 Have you any comparisons in mind upon which you base that?

A. I am basing this on the general trend of the spice business during January, February and March, where in several articles there were considerable stocks available. There were still large supplies arriving, like in cinnamon and similar articles, and notwithstanding that, those articles moved to a very large extent to the levels on which they were finally frozen by the O.P.A. on the March 1942 prices.

I am also basing it on my experience in the other countries where also pepper and other spices were coming in during that same period and where the prices did rise to levels of that kind.

Q. 220 Mr. Katz, if we assume that there had been no ceiling price established for pepper and that trading in it was without that restriction, what in your opinion would have been the market price of Whole Lampong Black Pepper in New York in May 1944?

A. May I ask a question about this question? You first asked me, in the first question, you asked me, that a ceiling price should be established, April and March 1942, in the same way as the other spices?

Q. 221 Yes.

[fol. 40] (p. 118)

A. Now you asked me, if there is no ceiling in 1944. Do you refer that there should have been a ceiling in 1942?

Q. 222 No.

A. Or do you say that there would have been no ceiling at all?

Q. 223 No ceiling at all.

A. From the beginning to the end?

Q. 224 Yes.

The Commissioner: That does not mean no ceiling at all on anything. It means no ceiling on pepper.

A. If there would have been no ceiling at all during all those years, I believe pepper would have gone up in 1944 to a similar level as we had now at the decontrol of the pepper, which has been between 50 and 80 cents per pound.

Q. 225 May I repeat the question that I put some time ago. That is, in your opinion, what sum would in all probability result from fair negotiations between an owner who was willing to sell and a purchaser who desires to buy, with respect to 773,000 pounds of Whole Black Lampong Pepper in New York City in May 1944?

(Q. 225 continued) Under actual conditions, with the sin-

[fol. 41] (p. 119)

gle exception that the ceiling price with respect to pepper was non-existent?

The Commissioner: And had been non-existent all along.

(Q. 225 continued) I will put it both ways: first, had been non-existent all along. That is practically the same question as before, but I will put it that way: non-existent all along. Will you answer?

A. It requires the same as the answer on the last question. If there had been no ceiling prices at all, the value of that pepper would have been somewhere between 50 and 80 cents, and the establishment of the sales price of this local pepper would therefore be somewheres in that level, subject to what you may call collective bargaining.

Q. 226 Let us assume, Mr. Katz, that there had been a ceiling price but that it had been removed in January 1944. What effect would that have, if any, upon the figure that you have just stated?

The Commissioner: Just a minute, before you answer that question. Why should that be pertinent at all?

(p. 120)

All of this is speculative, is it not?

The Commissioner: I will exclude an answer to that question. I consider it highly speculative.

Mr. Blackman: I respectfully except.

Q. 227 Mr. Katz, what, in your opinion, would the Commodities Trading Corporation have had to pay at any

[fol. 42] (p. 121)

time subsequent to May 26, 1944, to replace the pepper that had been taken from it on that date by the Government, amounting to 773,000 pounds of Lampong black pepper?

A. The first time that replacement could be had by the Commodities Trading Corporation was in August 1946, when control was removed. At that time you could have bought Lampong pepper in Singapore for shipment to the United States at around 40 cents per pound to New York; probably a little higher. That is the bottom.

You could have bought black pepper in British India at the same period at around 36 cents per pound c.i.f. New York. The only exception there is that British India pepper has not been shipped yet on account of import and export licenses, whereas the business from Singapore has been free. Everybody could get licenses, and therefore pepper from Singapore has been shipped already and is on the

[fol. 43] (P. 122)

way; whereas pepper from British India has not been shipped yet, but we hope it will be shipped in the next few weeks.

* * * * * * *

The Commissioner: May I ask a question at this point. Is that the reason why you say it would have been impossible for this plaintiff to have replaced the pepper until

[fol. 44] (p. 123)

August of 1946?

The Witness: Yes. If I may explain that to you, nobody was permitted, on account of the O.P.A. regulations, to buy and bring in any pepper at the prices prevailing in the Orient.

The Commissioner: Suppose restrictions had been sufficiently removed or in some way not applicable that this pepper could have been physically obtained in India at the time of this requisition in May or June, what was the price of pepper in the India market at that time under this exception you were speaking about where you could deal in it?

The Witness: The price at that time in India was, I testified also this morning, about 20 cents per pound c.i.f. New York.

Mr. Blackman: I wish to make an offer to prove that the sum that would in all probability result in fair negotiations between an owner who is willing to sell and a purchaser who desires to buy, with respect to 773,000 pounds of Lampong black pepper in New York on the 26th day of May, or at any time thereabouts in 1944, would have been upwards of 30 cents per pound, assuming that there were no re-

[fol. 45] (p. 124)

strictions of ceiling prices, and the purchaser had been free to buy and the seller had been free to accept such price as they both agreed was fair.

Mr. Rood: Is that assuming the existence of all other restrictions?

Mr. Blackman: I will put it both ways.

I offer to prove that it would be in excess of that price assuming no restrictions of any kind.

Mr. Rood: Including no war?

Mr. Blackman: No, not including no war. We had a war.

Mr. Rood: And we had the customary war restrictions.

Mr. Blackman: But they were artificial. They were put on by the same agency that took our pepper away from us, and I do not think it lies in the mouth of the Government to say, "We are going to take your pepper but we won't let you take a value because we have destroyed the value."

(p. 125)

The Commissioner: Counsel has submitted an offer of proof in connection with one of the questions as to which the answer was excluded. The offer is overruled. Counsel may note an exception.

Mr. Blackman: I respectfully except.

I make that same offer in the same form with the single exception that in this case I assume that all Government
[fol. 46] (p. 125)
restrictions were on except ceiling prices for pepper.

Mr. Rood: Isn't that what the last one was?

The Commissioner: I do not know.

Mr. Rood: I do not see the difference between this one and the last one.

Mr. Blackman: The last one assumed there were no restrictions, no Government restrictions, and in this case
(p. 126)
I am assuming that there was no ceiling price but other Government restrictions were in effect.

Mr. Rood: I do not suppose that is capable of proof.

The Commissioner: Are you making that offer in connection with the exclusion of testimony?

Mr. Blackman: Yes, sir.

The Commissioner: Very well. The offer is overruled.

Mr. Blackman: I respectfully except.

[fol. 47] (p. 127)

X. Q. 234. At the conclusion of your testimony yesterday, Mr. Katz, you were talking about your hypothetical views as to what willing sellers and buyers would have agreed upon as a price for a sale of pepper at the time of the requisition under various conditions. I do not remember all the figures you gave and I am going to ask you to repeat two or three of them. First of all, under actual conditions as they were, assuming the war and assuming all the consequences of the war, what would the price have been?

Mr. Blackman: You mean including the ceiling price?

Mr. Rood: Yes.

A. There was no price.

X. Q. 235. There was no price?

A. We could not buy and we could not sell. You could sell if you wanted to, but there were no sellers.
(p. 128)
Under actual conditions there were no sellers, so I cannot name a price.

X. Q. 236. What price would a willing seller and a willing buyer agree upon?

A. We could not agree.

X. Q. 237. You could not agree?

A. No.

X. Q. 238. Why not?

A. Because O.P.A. prevented a seller to be a willing seller.

[fol. 48] X. Q. 239. O.P.A. prevented a seller to be a willing seller? How?

A. Because the O.P.A. put out an unfair price to the holders of pepper, which the holders of pepper did not want to sell at, and the trade has been trying all that time to change the mind of the O.P.A. and bring about a market, but the O.P.A. would not listen to the advice of the trade.

[fol. 49] (p. 129)

X. Q. 243. Did the first ceiling cut the price?

A. No, that was the price which was prevailing in the market on December 7th, 1941.

X. Q. 244. Then a willing seller and a willing buyer would have been able to agree then, would they not?

A. On December 7th, yes, and after that also business was done. If I may explain to you, if you permit me——

X. Q. 245. Go ahead.

A. The ceiling price which was established on December 7th was low. It was according to the market of that month. So for that reason in the beginning there were sellers, but the O.P.A. forgot that a man has to pay storage and has to pay interest if he keeps merchandise for a long time in stock. So, in other words, if a man was willing on December 7, 1941, to sell at a certain price, he cannot afford to store such merchandise for a couple of years just for the pleasure of other people, and then sell them still at the same price.

[fol. 50] (p. 138)

X. Q. 285. Then the removal of O.P.A. price control does not necessarily produce a price increase, does it?

A. If I may reply to that question—maybe I have to be a little long—but I would like to give you there the exact facts.

X. Q. 286. First of all, answer the question and then you may explain. The question is, it does not necessarily produce a price increase?

A. No.

X. Q. 287. All right, now explain.

A. There are articles which are in good supply. There are articles which are in fair supply. I mean, they have been during this whole period of five years. And there are articles which are in very small supply.

I have been myself a member of several advisory committees of the O.P.A., appointed by the O.P.A. as such, and we have treated all those different articles according

(p. 139)

to that formula which I mentioned there. We have advised the O.P.A. accordingly.

If you would look through the minutes of the O.P.A.'s advisory committee on spices for the last five years, you could have seen that I myself and every member of the committee had told the O.P.A. that buying, holding down the price of pepper at what we call an unfair and impossible level, they were creating a scarcity which would bring [fols. 51-52] about a tremendous reaction later on.

In other words, we told the O.P.A. that we could as a trade keep pepper on what we thought would be a fair level, which we considered somewhere between 20 and 30 cents, if they would leave us free.

And we predicted to them that if they kept their ceiling at the price at which they were keeping it, that we would see a rebound much and much higher. It has been proven by the fact that at the moment of decontrol, the market today is 80 cents. If the O.P.A. had not kept that ceiling of 61½ cents, which was wrong, which was wrong according to everybody in the trade, we would not be selling pepper today at 80 cents.

. . . . . .

[fol. 53] X. Q. 298. Will you describe the exact nature of the differences in conditions which made 4.1 a fair price in 1940 but made the price which you said yesterday a fair price for May 1944. First of all, what did you say was a fair price for May 1944?

A. Between 30 and 40 cents I said yesterday.

X Q. 299. Now tell us.

A. I me , there were two questions asked: one was between 30 and 40, and the other was between 60 and 80. I don't know, if there had been no ceiling or if there had been a ceiling?

X Q. 300. If there had not been a ceiling.

A. If there had never been a ceiling, I said 50 to 80. If the ceiling had been postponed three months I said 30 to 40. [fol. 54] X Q. 301. What was the factor which made the difference between those two estimates?

A. The factor was if there had never been a ceiling the market would have its natural flow for the four-year period; in other words, prices would have gone up according to the needs of the people, and slowly prices would have moved

(p. 143)

to that basis which brings the supply in relation to the price. Whereas if only three months would have elapsed to have that free flow of merchandise, naturally, of course, then the price would have been lower. So that is why I made two hypothetical guesses, as far as that is concerned.

The Commissioner: I do not understand that. Can you put your finger on the factor to which you would ascribe a higher price wholly uncontrolled, than a higher price if there had been controls, but delayed.

The Witness: Yes, sir. When the war broke out in December 1941, we had here in New York in this country, a stock of about 100 million pounds of pepper, which was enough for three years' supply of our consumption in this country alone, because in addition to that we had to supply also South America and some other countries.

Therefore, if you had no control on prices for three months, I as a merchant have to take into consideration that there is a supply here of 100 million pounds; that that [fol. 55] supply has to be marketed. In other words, I would not go in the market and bid a dollar a pound for pepper if I know that there are 100 million pounds laying here in the warehouses.

So the trade will go slow and pay a fair price, which as I said yesterday, was between 30 and 40 cents, to my esti-

(p. 144)

mate, but they will not go to extremes.

Now the next point is, we go to 1944, which is two and a half years later. I figure that in that two and a half years there will have been a consumption of 70 million pounds at least. I have the figures there which have been consumed in the reduction of stock. So, consequently, in 1944 there is only a stock left of let us say 30 million pounds. Consequently, the law of supply and demand goes up with available supplies, which then has an upward move and brings that pepper up then to 80 cents.

The Commissioner: Why would there have been no additions to the supply from such sources as British India during that period?

The Witness: The supplies from British India, which were possible during the war-time, would have been at the utmost 20 million pounds. It is a nice quantity and we wanted that. That is why we were arguing with the Government to put the ceiling up and make it possible for us to bring it in, but the surplus in British India above their domestic consumption was for those years only 20 million pounds.

[fol. 56]

(p. 144)

Mr. Blackman: For how many years was that?

The Witness: Over the three years of the war.

The Commissioner: All right, Mr. Katz.

The Witness: If I may still add a little explanation,

(p. 145)

which may be interesting for you, as long as you like to get the market. The same applies to Brazil, as I told you yesterday, where the ceiling was first established as 36 cents per pound. At that price pepper sold out entirely. There is no more pepper available. Then the Brazilian Government, at the end of 1944, abolished that ceiling. The consequence was that the price of pepper in Brazil went up to as high as two dollars per pound in the year 1945 and early 1946.

Then when in 1946 more supplies came over on account of the end of the war, Brazil received about 500 or 1000 tons of pepper, and today the price in Brazil is down again from its two-dollar high which it has had to 50 cents per pound. That explains the flow of supplies or no supplies.

(p. 146)

X Q. 305. Then you would not consider the O.P.A. ceiling price was unfair in 1944 just because of the storage costs since 1940 or since the——

A. Oh, yes. I mentioned that before, I think I have testified this morning that even if you would think that 6½ cents [fol. 57] would be a fair price in December 1941, which is still debatable, then it certainly is entirely unfair three

(p. 147)

years later when the people have to keep their merchandise in a warehouse for all those years.

* * * * * * *

(p. 148)

[fols. 57½-58] X Q. 309. Then what you are saying is that the price should have been increased to between 20 and 30 cents?

A. That is right.

XQ. 310. In order to induce American speculators to sell and also to induce foreign speculators to sell, isn't that right?

A. Mr. Attorney, I ought to say, you liked the word "speculators" when you asked yesterday——

* * * * * * *

(p. 152)

[fol. 59] The Commissioner: I am still confused about your differentiation between the price of 20 and 30 cents, and the price of 50 to 80 cents. Do I correctly recall your testimony yesterday to be that the price of pepper in British India, such as was available, at the time of this requisition in May 1946, was about 20 cents a pound?

The Witness: Correct.

[fol. 60] (p. 153)

The Commissioner: I do not understand why that price would have been so low if the other conditions existed to which you testified as to a short supply constantly growing shorter. British India was the only source, was it not, of pepper to the entire allied world?

The Witness: Correct.

The Commissioner: As far as I can tell from your testimony it comes down to this; that if that source of supply had been used during the time it would have been used up and the price of pepper in India would have gone up along with the price here, but since that supply was not picked up during those times, it did not rise; is that correct?

The Witness: That is correct.

The Commissioner: Why was that supply in India not accumulated by goverenmental action of the Allied Combined Food Board?

The Witness: I can understand perfectly your ideas. In fact, it shows that you see the same picture which we saw in the trade in 1943 and 1944.

The question is this: We wanted that pepper and needed that pepper here. The Combined Food Board is taking care of the allocation of all kinds of foods all over the world. Consequently, the United States Government and the British Government and the Canadian Government, who

[fol. 61] (p. 154)

constituted at that time the Combined Food Board, ruled that out of that surplus of pepper which there was in

British India, the United States would receive 5000 tons of pepper. In other words, that pepper, that ten million pounds of pepper was at our disposal.

On account of the Government workings nobody in British India, therefore, could ship that pepper anywhere else. I would have liked to buy it for Brazil or Argentina or Chile or anywheres, and I could have made a nice profit on it. We could not. That pepper remained reserved for the United States, but the O.P.A. did not permit us to buy it. So there it remained in British India, and this poor rich man in India that we spoke about, had to keep that pepper there in the warehouses and everywhere, and was not allowed to sell it to any other country, because the Food Board had said, "that's for the United States," but the United States did not buy it because it did not want to pay the prices. And we had been quarreling about that in our different meetings in Washington for the last two years.

The Commissioner: The price in India was not controlled, I think you said, as such.

The Witness: To some extent, yes. It was a free market to some extent, but on account of the fact that they were not allowed to sell it anywhere else——

[fol. 62] (p. 155)

The Commissioner. That is what I am getting at. There was no price set, but the direction in which the sales could be made was controlled.

The Witness: That is right.

The Commissioner: And is that the reason why the pressure did not build up or why the owners of this Whole Pepper did not realize the shortage in supply and the potential increases they could demand?

The Witness: Oh, they did realize it. They were posted about it, but still, what can you do when you buy and you cannot sell. Suppose you want to sell me this chair, but you say, "Mr. Katz, you are now allowed to sit on it." Then the value of that chair is lower than if I am allowed to sit on it. That was the same as this pepper. They said, "Boys, you may sell this pepper, but you are only allowed to sell it to the United States."

Now, consequently, the people—and to prove to you the correctness of that—at the moment, in August, in our prices here, when our prices were decontrolled, then immediately the British India people said, "Now we know we can sell it to the United States, but we can sell it at our prices, so

we are paying them between 35 and 40 cents for it, which we could have bought last year at 22 cents, and we were prevented from doing that again by the O.P.A. Now we can do it and now we pay 35 and 40 cents for it.

[fol. 63] (p. 157)

X Q. 336. There was a war going on in 1940, was there not?

A. Not in the Orient; in Europe.

X Q. 338. There was no war in the Orient?

A. In 1940, no. It started December 1941. The war against Japan started December 7, 1941.

* * * * * * *

(p. 158)

X Q. 341. There was war on the high seas, was there not?

A. Not on the Pacific; on the Atlantic, yes. And not the American fleet, but only of the British and the Germans and the French.

X Q. 346. And if the United States had not gone to war with Japan, then the price of pepper would have remained low, is that correct?

A. Not as low as it was. If you want again a prediction from me, like you have been asking me so many things, but just as I explained to you, the guesses which I made, I will explain this too: that we know that after seven lean

[fol. 64] (p. 159)

years you have seven fat years, and that is the cycle, except that people explain it in a different way. I always say that when an article is cheap it is going to go up again, and then when it is high, it always goes down again.

(p. 160)

X Q. 352. Maybe you misunderstood my question. What I mean is that you would say that you would not testify on oath that 6½ cents would have been an unfair price if there had been no war and no O.P.A., would you?

A. Yes, sir. I would have said that 6½ cents would still be an abnormal low price for pepper. The average, as I said yesterday, the average of fifty years of pepper was 13½ cents. So when an article sells at 6½ cents—that's the way we business people figure—when an article sells at 6½ cents and when the average price of fifty years is 13½ cents, we say, "Boys, this is still a bargain."

X Q. 353. Yes, but I mean you would see no factors which would have increased the price from the 1940 level more

(p. 161)

than 6½ cents within that period, would you?

A. Oh, yes.

X Q. 354. What would that have been?

A. I testified yesterday, I think, that low prices cause smaller plantation and smaller production, whereas high prices causes larger plantation and larger production, but now we were in a period of low prices; consequently, the production was already curtailed and would have been further curtailed.

[fol. 65] (p. 164)

X Q. 369. You cannot testify on oath that in your opinion had there been no war between the United States and Japan and no price control, that under those conditions a price fifty per cent higher than the 1940 price would not have been fair value, can you?

(p. 165)

Mr. Rood: I will state that I mean a fair market price in New York.

A. You mean in May, 1944?

You want to know if there had been no war, if I would then consider that in May 1944, 6½ cents would still have been a fair market value in May 1944?

(p. 166)

If I may give you a little background on the market before, then I will explain to you again, just like I did on those other questions, on what I base my opinion. I think the price should have been higher at that time. Will you permit me to go back and explain to you the market conditions before 1939 and after, and I can explain to you why it is.

I will tell you. We had a big over-production in the years 1935 to 1938, and I think Mr. Blackman has been referring yesterday to my reports. Some of them they did not like at that time, in the early time, because I was just giving them—their idea was good but they were timing it wrong. When they started already to buy pepper in 1933, 1934 and 1935, we were still getting an overproduction, and that overproduction time did come up in 1935, 1936 and 1937.

[fol. 66] (p. 166)

And having in mind that this is not a crystal ball gazing for me, but I had the information from my own people in

Sumatra, where I have my office, and they said there was a big production coming, and that big production came during those years; the big production was stopping in 1938-1939.

[(fol. 67] (p. 167)

X Q. 374. How do you know that?

A. For the same reason that I knew it was coming, because my people saw the planting and my people saw the neglect of the plantation- which were there. If you read through—I am not just saying this now—but if you would ever read through my market reports for the year 1935 through the year 1941 and 1942, you will see that what I am saying now was expressed in those reports.

X Q. 375. That is, you are saying that pepper production was leveling off after 1938?

A. Yes sir. On account of the low prices, just as I explained yesterday, on account of those tremendous high prices of the years 1925, 1926 and 1927. And they made the mistake—that is what I have been telling them—to forget that we had such an abnormal high price in 1926-1927 of 40 cents per pound, which was abnormal at that time for the pepper market. It was the highest price we have reached in fifty or one hundred years, or whatever it was, and on account of that production increased so tremendously.

On the other hand, when we reached, I think 1937 or 1938, the price of three cents, that price again was so abnormally low, which we also knew that abnormal low price was going to cause again a reduction of the production, just as the abnormal high price in 1926-1927 caused this abnormal

(p. 168)

over-production, so as soon as we reached the price of three cents, which was the lowest price—I think I sold pepper as [fol. 68] low as three cents out there—and as soon as we reached that price, no grower any more could buy fertilizer or anything to sustain his production, and from that time on production started to decrease again.

Therefore, if you ask me now the question: Mr. Katz, if there had been no interference of O.P.A. between the years 1941 to 1944—

X. Q. 376. And no war.

A. And no war during that period, what would have been the market, I base myself on that same cycle which you have been saying; larger production, lower price. We are now

in the period of smaller production and consequently higher price. The average price of the last fifty years has been before 1941, 13½ cents, so we were heading again for the higher price levels.

X Q. 377. When was this low of 3 cents reached?

A. It is in the booklet you have. The low price was reached in June, 1939.

X Q. 378. June 1939 was the rock bottom of the cycle then, is that right?

A. Yes, sir. And from that moment on it kept steadily going up, and just as you said, the war in the Atlantic did

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not make so much difference because it just went steadily up. You see, 3.5, 4, 4.1, 4.8—it did not go up more than 4.1 when there was the Atlantic war—and then in 1941 it [fol. 69] started to go up further.

X Q. 379. You do not know how far it would have gone by May 1944?

A. No, sir, that is too much of a guess.

X Q. 380. Of course. But how long does this pepper cycle usually take?

A. That I cannot tell you either exactly, because many people thought that it would take seven years. Even Professor Pearson, who wrote the booklet, thinks from the past he has proven that it takes seven years on account of the planting and everything, but I told him that seven years could fool him very much because if you had an abnormal small production and abnormal high prices, like we have had the cycle would be extended until that abnormal condition was leveled off.

X Q. 381. You said that in 1941 at Pearl Harbor day, there was a three-year supply in the United States?

A. Three-year supply for only the American United States consumption, yes, but I said also that we were also supplying other countries.

X Q. 382. Yes.

A. And as I testified yesterday, the total would consump-

(p. 170)

tion was about 120 million pounds.

[fol. 70] X Q. 383. All I want to know is, was that an abnormally high supply?

A. Yes.

X Q. 384. Twice as much as usual?

A. Much more. Going back to three years before that, there were practically no reserve stocks available at all. Also there in the booklet, that is taken from one of my annual reviews, you see the world surpluses of pepper for all the years.

There is in this booklet also of Professor Pearson, that was taken also from some of my reports, that in the year 1932 the world shipments were estimated at 52,650 tons, and the consumption for the world at that time was 55,000 to 60,000 tons, which means that the consumption was greater than the total shipments by 2000 to 7000 tons. Therefore, surplus stocks were rapidly liquidated and by the end of 1932 world surpluses were estimated to be only 4299 tons in all consuming markets, and then we started to work upwards.

Mr. Blackman: Then the big production from enormous planting in 1927, 1928, 1929 and 1930 began to come on the markets

The Witness: That's right. Then our stock was accumulated to those 100 million pounds which we had when

(p. 171)

the war broke out.

[fol. 71] (p. 177)

X Q. 417. I suppose that if the stocks in this country had been available for export, they could have been exported and sold abroad, could they not?

A. Yes, sir.

X Q. 418. By coming into the markets abroad, that would have reduced the foreign prices, would it not?

A. No, because we did not have enough stocks here to supply the needs of the consumption in all the other countries, because, in other words, we would still have been short. If we had exported every bit which we had in the years 1944 or 1945, whatever you want to say, you would

(p. 178)

have been able to obtain any kind of price for that merchandise in the other countries of the world, because that quantity which was available was still an infinite small percentage of the needs of those countries at that time.

X Q. 419. of the entire world?

A. Of all the available countries which were able to buy during that period.

X Q. 420. I mean, you said that there would have been a small addition to the needs. It would have been a small addition to supply the needs of the entire world?

A. That is right.

X Q. 421. What are the countries which are normally supplied from this country?

A. South America, Central America, West Indies.

[fol. 72] X Q. 422. The New World?

Mr. Blackman: And Canada?

A. Yes, the Western Hemisphere.

Mr. Rood: He did not say Canada.

Mr. Blackman: I asked him.

The Witness: Also Canada.

X Q. 423. Do we supply Canada?

A. Yes.

[fols. 73-74] (p. 179)

Redirect examination.

By Mr. Blackman:

R. D. Q. 429. Mr. Katz, in one or two instances in answer to Mr. Rood and in answer to me, too, yesterday, you said or you used the words "that is a guess." By that did you mean that was your opinion and that you could not know the facts?

A. That is right.

R. D. Q. 430. Based upon your long familiarity with this kind of business, that was your best opinion?

(p. 180)

A. That is right.

R. D. Q. 431. I think you also said you would not guarantee it.

A. That is right. I would rather make statements that I know about than to give just opinions.

* * * * * * *

[fols. 75-78] R. D. Q. 439. Do you mean by that that the markets of the world, and supplies of the individual producers had been swept clean by these terrific high prices; everybody who had a pound wanted to sell it?

A. In 1927 and 1928?

R. D. Q. 440. Yes.

A. Yes, sir.

R. D. Q. 441. And in addition to that, this low price was a result of the fact that the wise people saw this enormous production coming in two or three years?

(p. 182)

A. That is right.

R. D. Q. 442. And that is a common thing, the market foresees these things and registers prices two or three years in advance of what actually happens?

A. They try to do it. They do not always succeed.

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[fol. 79] (p. 186)

R. D. Q. 451. In considering the quantity of pepper that was on hand in the United States in the early part of the war, is it necessary to consider the fact that this Government had undertaken to supply pepper to Canada and [fol. 80] South America?

(p. 187)

A. Of course.

R. D. Q. 452. And it did supply large quantities of that pepper to Canada and South America, did it not?

A. After the outbreak of the war, in large quantities. That is just it. There has been a big fight in our meetings every year between the export trade and import trade. The import trade wanted to keep everything here and the export trade wanted to supply the foreign customers also. It was just a question of how much.

R. D. Q. 453. And export licenses were granted from time to time to dealers in pepper to export it to South America?

A. Yes, sir.

R. D. Q. 454. You got some of those yourself, did you not?

A. Yes, sir.

R. D. Q. 455. You know that we got some?

A. Yes. I did not know you were as much competition as that.

R. D. Q. 456. And those export licenses fixed the ceiling price for the American exporter to sell in the South American countries, but that price was higher, substantially higher than the ceiling price in the United States?

A. That is correct.

R. D. Q. 457. Which made everybody try to get as many licenses to export as they possibly could?

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A. Correct.

(p. 189)

[fol. 81] R. D. Q. 462. Mr. Katz, what was the reason for the situation which you disclosed in your testimony where pepper was selling in India for only 22 or 23 cents, and was selling in Brazil for as much as $2.00 a pound?

A. For the simple reason that you could not bring the one to the other. If you would be able to do it, it requires, just as simply as to say that my own pepper, which I had here in the warehouse and I could not sell here above 6½ cents, if I only could have taken it on my back to Brazil I could have sold it, but I wasn't allowed to do it. The Indian man was not allowed to do it either.

R. D. Q. 463. That is, the British Government and the American Government by agreement restricted the exportation of India pepper?

A. Correct.

R. D. Q. 464. And they were allowed to export only to England and to the United States practically?

A. No. They got some allocations to all different countries but only for very small quantities.

[fol. 82] (p. 200)

R. D. Q. 497. And in that connection, Mr. Katz, have you tried from time to time to induce the Army to reduce the amount of controversy between itself and the persons from whom it requisitioned pepper by returning pepper to the people that they took it from?

A. Yes, sir; I have been, as I said, for the last five years, I have been working on this pepper controversy, and I have given several good solutions. I have been writing it in my reports, my market reports, "The Pepper Follies of 1943, 1944 and 1945." And I have been up at the War Department, I have been in the Agriculture Department, I have

(p. 201)

been trying to avoid all this loss of time which we are having here in the last few days.

R. D. Q. 498. As a matter of fact, it turned out, Mr. Katz, that the Army requisitioned a great deal more pepper than they really needed?

A. That is correct.

By Mr. Rood:

R. X Q. 499. How do you know?

A. Because after the war was over, pepper was returned. It was sold as surplus by the United States Government.

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[fol. 83] (p. 201)

Redirect examination.

By Mr. Blackman:

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(p. 202)

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R. D. Q. 502. And they refused to do that?

A. Yes, sir.

By Mr. Rood:

R. X Q. 503. When was that?

A. During the course of the last year, since the end of the war.

[fol. 84] William Archibald, Jr., a witness produced on behalf of the plaintiffs, having been first duly sworn by said Commissioner, was examined, and in answer to interrogatories, testified as follows:

Direct examination.

(p. 203)

By Mr. Blackman:

Q. 1. Mr. Archibald, what is your business?

A. I am a spice broker and an import agent.

Q. 2. For how long have you been engaged in the spice business, in one way or another?

A. Since 1910.

Q. 3. Please state the various ways in which you have been engaged in that business over that period.

A. From 1910 to 1926 I was in the employ of Archibald & Lewis Company, who were grinders and importers of spices. From 1926 to 1928 I was the president of a cor-

poration known as I.H.E.C. of New York, Inc. We were in the business of importing spices.

From 1928 to 1929 I was vice-president of Charles E. Armstrong, Inc., who were importers and exporters of spices.

From 1929 to 1931 I was vice-president of John Clark & Company, spice brokers.

From 1931 to 1937 I was William Archibald, Jr., Inc., spice brokers and import agents, as I owned the corporation.

From 1937 to the present time I have been a partner
[fol. 85] (p. 204)
of the firm of Van Norden & Archibald. I have two other partners and we are in the business of acting as brokers and importers in spices, varnish gums, rubber and miscellaneous foreign produce.

Q. 7. But in what parts of the world or the country do you do business?

A. We do business with importers and manufacturers in the United States and Canada, and we also do business as selling representatives of firms in all countries of production and all trading centers in our line of goods, such as places in Holland, Dutch East Indies, Straits Settlement, China, Africa, India, Zanzibar, Madagascar, West Indies, Mexico, etc.

Q. 8. Has black pepper been one of the classes of spices that you have dealt in?

A. Yes.

Q. 9. Was it one of the most important or the most important class of spice that you dealt in over this period?

A. Yes, one of the most important.

[fol. 86] (p. 205)

Q. 10. Was it the most important?

A. Well, pepper is the most important article in the spice trade, and except during the war years, when we had a restricted market, it had always been one of the most important articles in our particular business.

Q. 11. That is, it was responsible for a large part of your entire volume?

A. Volume and time and attention, yes.

Q. 12. Mr. Archibald, have you had occasion to be a member of any associations of spice dealers and have you taken an active part in the spice industry outside of your regular business?

A. Yes, I have always been a member of the Spice Trade Association through the firms I have been connected with.

Q. 13. By the Spice Trade Association to what do you refer?

A. We have only one, the American Spice Trade Association.

Q. 14. And that represents the entire industry?

A. Yes, that represents the entire industry.

Q. 15. Throughout the United States?

A. Yes. It is rather a unique organization in that unlike most trade organizations we represent all parts of the industry. Our association has among its members brokers, manufacturers, impport agents, importers.

[fol. 87] (p. 206)

Mr. Rood: What do you mean by "we represent"?

The Witness: Well, I mean that all classes of trade belong to the association, so that the work of the association represents the thoughts and problems and interests of all these phases of the industry. Frequently you will find a trade association is an association of brokers, or it is an association of importers, or it is an association of manufacturers. Our association is an association of all.

A. I was secretary of the association in 1917 until I went into the last war, and in 1942 I was elected treasurer and a director. In 1943 I was elected vice-president. In 1944 I was elected president and served until 1946. I am now a director of the association and chairman of the arbitration committee of the association.

[fol. 88] (p. 207)

Q. 19. Mr. Archibald, in the course of your business is it necessary for you to be familiar with the market prices of the spices that you deal in in various countries of the world?

A. Yes.

Q. 20. And have you kept yourself so familiar for a number of years?

A. I have certainly tried my best.

Q. 21. Is it also necessary for you to know and understand the factors that influence those prices?

A. Yes.

Q. 22. And have you kept yourself informed concerning those factors?

A. I believe I have.

Q. 23. Such as supply and demand and freight rates and things of that kind?

A. Yes.

Q. 24. Everything that would enter into the price of the merchandise that you sell?

A. That is right.

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[fol. 89] (p. 208)

Q. 29. As a broker, is it important for you to know

(p. 209)

[fol. 90] where and how to purchase the spices that you deal in?

A. It certainly is.

Q. 30. Does that apply to black pepper?

A. It does.

Q. 31. Was any black pepper being offered in the City of New York or anywhere in the United States at or under the ceiling price of 6½¢ in any month of the year 1944, prior to October?

Q. 32. Was there any such pepper offered at any such price?

A. No.

Q. 33. I said the ceiling price of 6½ cents now. That was the basic ceiling price, was it not?

A. Yes.

Q. 34. And there were small multiples in addition to that 6½ cents for quantities smaller than the 100 bags as I believe, is that right?

[fol. 91] (p. 210)

A. That is right.

Q. 35. And also there was an allowance in addition to the 6½ cents for putting the pepper in the warehouse, as they call it, is that correct?

A. That is right.

Q. 36. When you say there was no pepper offered at or under the ceiling price, it takes into account those allowances?

A. That is right.

Q. 37. Were you familiar in 1940, 1941, 1942, 1943, 1944 and 1945, with the world conditions of pepper?

A. I think so, yes.

Q. 38. What the stocks were, where they were, what was being bid for them in different places?

A. Well, during the war years, information which we ordinarily would have about stock situations and business operations in countries that were pretty much beclouded in their information on account of the war, such information was not freely available, so that with reservations I would say generally so, as much as a person could be under war conditions.

Q. 39. Well, you knew what the conditions were in this country?

A. Yes.

Q. 40. How much pepper there was and what the demand

[fol. 92] (p. 211)

for it was?

A. That is right.

Q. 41. Did you know conditions in South America?

A. Generally, I mean, that was trade information from reports coming in.

Q. 42. And did you have reports upon conditions in India and England and other places?

A. Yes.

Q. 43. That is, what the markets were in those places, and what the quantities were, and items of interest of that kind?

A. That is right.

Q. 44. Mr. Archibald, have you an opinion as to what would have been the course of prices in the United States with respect to Lampong Whole Black Pepper if no ceiling had been imposed prior to March 1, 1942?

A. Yes, I have an opinion.

Q. 45. And upon what do you found that opinion?

A. Upon my experience in the spice business, with pepper and other spices.

[fol. 93] (p. 212)

Q. 46. Will you please state what, in your opinion, would have been the course of prices of pepper after the World War, beginning December 1941, had there been no ceiling price imposed prior to April 1, 1942?

A. Well in my opinion we would have had a very active market in pepper. For the first month or so probably a slow advancing market, because there was a large quantity of pepper here. Some of it had been of low cost, and it is our usual experience in such matters that such holders sell out rather quickly.

Q. 47. Especially where there is an excess profits tax?

A. That is right. The market in my opinion would have picked up rather rapidly after the first of the year, and by the spring of 1942, in my opinion, the market for pepper would be somewheres in the range of 30 to 50 cents a pound.

Q. 48. You are speaking now about Whole Black Pepper?

A. Yes, Whole Black Pepper.

Q. 49. The Lampong variety?

A. That is right.

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[fol. 94] Q. 50. Now, in your opinion, Mr. Archibald, what would have been the sum that would in all probability result from fair negotiations between an owner who was willing to sell and a purchaser who desired to buy, with respect to Whole Black Pepper in a quantity of 773,000 pounds in New York City in May, 1944, assuming all the restrictions which were in effect at that time, but excepting the ceiling price on pepper?

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A. I would think that the price range of such a transaction would have been somewheres between fifty cents and a dollar a pound. That is rather a wide spread. I do not think it would have been any less than fifty cents a pound, and I am quite sure that in a free market, if the goods had been offered at closer to a dollar a pound than fifty cents a pound, it would have found ready buyers.

Q. 51. Do you know at what prices this kind of pepper was selling in various markets of the world at that time?

A. We had, of course, access to no market of supply excepting—I mean, no information as to the prices here in markets of supply because the countries of supply were cut off, were cut off by the war, with the exception of India. As I recall, the market price in India at that time, it was

[fol. 95] (p. 214)

roughly in the neighborhood of 20 cents a pound. There again, that market was limited in any supposition of what the market might be by the fact that they had very few selling outlets, and for that reason I would not say they had really a free market.

Q. 52. That is, the price was not restricted but their ability to sell was?

A. Yes.

Q. 53. By the British Government?

A. And if their ability — sell would have been there, their price would undoubtedly have been higher. We also had a controlled market in London where, as I understand it, operations of that market, the Government food authorities bought the pepper, and no matter what they paid for it, sold it at a price which was roughly a shilling a pound, about twenty-odd cents a pound to the trade.

Then we have the other countries, principally on the Western Hemisphere, and there the reports reaching us were to the effect that the market range from some forty or fifty cents a pound to two dollars a pound, depending on the countries and the supplies at the time, and so on. But over that period the world market price for pepper was very high.

[fol. 96] (p. 215)

Q. 54. Mr. Archibald, what, in your opinion, would have been the lowest price at which this Company, Commodities Trading Corporation, could have replaced 773,000 pounds of Whole Black Pepper which was taken by the Army on the 26th day of May, 1944?

A. The first opportunity they would have had to replace it was this fall when pepper prices were released from O.P.A. control, and when import licenses were given to import pepper. And then pepper could have then been bought at Singapore in that quantity at prices ranging from 45 to 55 cents a pound, c.i.f. New York. It might cost you a little extra to put it in storage and also to actually replace it, but say at an average of 50 cents per pound. That would be the first opportunity that I know of. There would

[fol. 97] (216)

have been an opportunity to replace it in India if restrictions were removed, but there you go into the ifs, ands and buts. This fall was the first time it was possible to actually replace it.

Q. 55. No pepper has come in from Indian since the removal of the ceiling?

A. No.

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A. (Continuing) I say no, with this possible qualification——

Mr. Rood: Since the removal of our ceilings.

Mr. Blackman: The ceiling on pepper in the United States.

Mr. Rood: O.P.A. ceilings.
Mr. Blackman: O.P.A. ceilings, yes.

A. (Continuing:) The Government has told us that they are bringing in some pepper from India, which is expected to arrive momentarily. As far as I know, it has not yet arrived, and if it has arrived, that would qualify that answer, but I do not know that it has.

Q. 56. Up to the present time, however, has it been possible for individuals or brokers or importers to purchase pepper in India and import it into the United States?

A. It has not been possible to complete the transaction. There have been some tentative transactions made subject

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[fol. 98] to export licenses being granted by the Indian Government.

Q. 57. That is, you have to qualify first of all in order to get an import license from the American Government?

A. That is right.

Q. 58. And after you have gotten that, you have got to negotiate for your pepper in India, and then if you buy, then you run the risk of getting or not getting a license from the Indian Government to export it?

A. That is right.

Q. 59. Do you know of any licenses which have been granted by the Indian Government for the export of pepper of that kind to any private individual firm or corporation?

A. No.

Q. 60. They are trying to get it at the present time?

A. That is right.

The Commisioner: Does that mean that it is still impossible for this plaintiff to replace this pepper?

Mr. Blackman: Yes.

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[fol. 99]

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X Q. 83. If there had been no war, what would the price cost have been from Pearl Harbor day on?

A. Well, I was in the courtroom this morning and heard Mr. Katz's testimony in that respect, and it was very intelligent testimony. Mr. Katz is a very well informed member of the spice trade, and I am quite largely in agreement with that testimony.

My experience in pepper, which now goes back to well over thirty years, has been that pepper, like most other commodities, has its ups and downs, and we found that when a price is high, production is encouraged. If prices go very high, we get a very big production. That is followed by a period of low prices because of the big production. In turn, the low prices curtail production, and prices improve, so that it becomes profitable to produce, and you have a succession of cycles.

Now, the high prices in the Twenties caused a heavy production of pepper and heavy planting of pepper vines, and we began to get in the mid-Thirties a very large production. The price because of that large production

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slumped off to historically low prices, and that in turn curtails production.

So that in the normal following out of that cycle I would say that we would have had a reaction from the low prices so that prices would reach a point where they would [fol. 100] be higher than the minimum or average price which I have always considered from my own personal qualifications as around roughly 12 or 13 cents a pound.

I think one of the members of our trade has prepared a very secret chart which shows an average price, as I recall it, of somewheres in the neighborhood of 13½ cents a pound.

So that, answering your question, over a reasonable period of time, I would have expected the price of pepper to go to a point higher than that average price of 13½ cents a pound.

[fol. 101] (p. 227)

X Q. 91. Would there not have been a panic in the pepper market if there had not been a war in 1941?

A. Wouldn't there have been a panic?

X Q. 92. In the United States here with all these accumulated inventories?

A. I don't think so, no. What do you call a panic?

(p. 228)

The entire disappearance of values and so on?

X Q. 93. There would have been a wholesale unloading, would there not?

A. In 1941?

X Q. 94. Yes.

[fol. 102] A. Without the war?

X Q. 95. That is right. These inventories were accumulated in anticipation of war, were they not?

A. No. Are you referring to the large accumulation that the Commodities Trading had?

X Q. 96. For instance, yes.

A. That started, as I remember, back in 1933 or 1934. I am sure there was no thought of war in their minds at that time.

X Q. 97. Not at that time?

A. No.

X Q. 98. But there was in 1941. In the market there was a feeling that war was going to move into the Indies?

A. There certainly was in my mind.

X Q. 99. Yes.

A. Yes, there was.

X Q. 100. But if there had been no war, that would have had a bearish effect on the pepper market here, would it not, in view of the large inventories on hand?

A. No, I would not think so. Your market at that

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time was taking—it had had its bearish trend, so to speak, with the large production of the middle Thirties. Production was waning because of the low prices and the pepper was in good sound hands. Those people that bought it were quite able to hold it. You had a trading market on the Produce Exchange in pepper which provided a fine hedging [fol. 103] market. Trading was coming into New York from all parts of the world.

X Q. 101. What do you mean by a fair hedging market?

A. Well, I mean this: one of the largest pepper traders in the world is a company in London. They sell pepper to all parts of the world, Egypt, Italy, South America, and so on. They have to sell months ahead of time. Sometimes they take contracts to deliver a year ahead of time.

X Q. 102. Is that short selling?

A. No. And I will tell you why. Their method of business was to, for instance they have an inquiry from Egypt, we will say, for 15 tons of pepper. And this is October, for March delivery in Egypt.

X Q. 103. You do not mean that Egypt buys pepper from London?

A. Yes, right.

X Q. 104. He cables an order over to his brokers in New York. I happened to be his broker right at the minute.

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In a free market—we haven't got a trading market on the Produce Exchange at the moment—but we are taking a hypothetical position that there is a trading market there, as was the case in 1941. He cables an order over to me, we will say, as his broker, to buy 15 tons of pepper for [fol. 104] March delivery on the Produce Exchange. That establishes his cost for 15 tons of pepper for March delivery on the Produce Exchange. Well, he sold the pepper to Egypt. Now he has to get that pepper to Egypt by March. So along about January or February he has instructed his office in Singapore or in Java or in Sumatra to ship 15 tons of pepper, buy and ship 15 tons of pepper to his customer in Egypt, and they do, and they buy it at the market prices prevailing in January or February.

At the time he buys that pepper in Java, Sumatra or the East Indies, he sells his March contract in New York. He doesn't care what price he sells it at because he has already hedged his sale to Egypt by his purchase in New York. So it is simply a matter of buying it in the country of production and selling it and undoes his hedge.

To have a hedging market of that kind you have to have a lot of pepper here. You cannot do it on paper, and that was one of the reasons there was so much pepper here in store. It was being hedged by these transactions all over the world.

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X Q. 105. Can you state that if there had been no war the price of pepper in 1944, May of 1944, would have been higher than 6½ cents?

[fol. 105] (236)

X Q. 119. Had any pepper been offered in May 1944, in the New York market, what price would it have brought?

Mr. Blackman: I object to that. It is perfectly obvious that unless it was offered in conformity with the law——

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The Commissioner: Objection overruled.

Mr. Blackman: I respectfully except.

A. As I understand your question, if a seller came in the market and offered a quantity of pepper in May, 1944, what price would he have paid for it? It depends for what purpose the pepper was offered. If it were offered

for domestic consumption only, such a buyer under the law would pay 6½ cents, plus any permissible accumulations which the O.P.A. ceiling price permitted, and that would have been the highest legal price he could have paid for it. On the other hand, if a man held an export license, as some people did at that time, such a man could have paid a price plus the permissible profit that he could charge for export and have had the seller do the exporting for him. That also was done.

X Q. 120. You mean that this O.P.A. ceiling in New York did not limit sales in New York for export?

[fol. 106] (p. 237)

A. It governed sales in New York for export, but with an increased price permitted to the exporters.

X Q. 121. Does that appear in the ceiling regulations?

A. Yes.

Redirect examination.

By Mr. Blackman:

R. D. Q. 122. Suppose a seller had come into the New York market in May 1944 and had offered 773,000 pounds of pepper at the ceiling price, what would have happened to it?

A. The buyers would have stood in line to buy it.

[fol. 107] William Archibald, Jr., a witness produced on behalf of the plaintiffs, (recalled) having been resworn by the Court, was examined and testified as follows:

Direct examination.

By Mr. Blackman:

(December 16th, p. 6)

* * * * * * *

(December 16th, p. 9)

[fol. 108] Q. 32. Mr. Archibald, you were asked by Mr. Rood when you were on the stand before with respect to the course of pepper in the past and something with respect to your prediction as to what would happen or what would have happened after 1940 if there had been no war.

Now, will you please look at this graph that I show you and state whether that shows substantially the course of [fol. 109] the price of whole black pepper in New York over a period of 75 years or thereabouts?

A. Yes. I have been actively handling pepper since 1910; and the rest is a matter of history.

Q. 33. Well, many of those graphs were prepared here recently when we had these violent fluctuations in pepper.

A. That is right.

Q. 34. And that is substantially accurate?

A. That is right.

Mr. Blackman: I ask that that be marked in evidence.

Q. 35. Mr. Archibald, the past performance of pepper so far as its market movements are concerned, has been a matter of record back to 1818 or thereabouts, hasn't it?

A. That is right.

Q. 36. And is it customary for dealers in pepper and for brokers and persons carrying on the business that you are carrying on, to be familiar with that past history?

A. It is.

Q. 37. Were you actually and are you now familiar with that past history?

A. Yes.

Q. 38. Due to the very violent fluctuations that took place in the price of pepper during the last 15 years or thereabouts, were many graphs of the kind that I have shown you prepared?

[fol. 110] A. Yes.

Q. 39. And were you familiar with them at the time they were prepared?

A. Oh, yes.

Q. 40. And does this graph here actually and accurately show the prices and the variations in prices that took place over that period, according to your own information, from the examination of past records in connection with your regular business?

A. It does.

The Court: How much of this are you offering in evidence?

Mr. Blackman: Just one page, sir. "Wholesale Prices."

The Court: I think it may be admitted.

Mr. Rood: I respectfully except to the introduction.

(Marked Plaintiffs' Exhibit 1.)

Q. 49. Well now, it takes about, I think the testimony was, from five to seven years after the vine is planted before it begins to bear in volume.

A. That is right.

Q. 50. Now, we had an enormous price, according to that graph, in 1927-28 and thereabouts; is that right?

A. That is right.

[fol. 111] Q. 51. Now, what was the result?

A. Well, the result was that in the middle '30s we had a tremendous production of pepper.

Q. 52. How did that production compare with any known production previous to that?

A. It was a greater production than any previous production I know of; and, as a matter of record, I believe that it was a greater production than had taken place in the past.

Mr. Rood: When was that?

The Witness: In the mid-'30s.

Q. 53. Now, referring to that Exhibit 1, Mr. Archibald, you notice the peaks and valleys there. Now, approximately what was the duration of those low prices or valleys?

(December 16th, p. 22)

A. Between four and five years.

Q. 54. There has been no case where the graph shows above that the low prices had continued for more than four or five years?

A. No.

Q. 55. Mr. Archibald, do you know whether the same general course of peaks and valleys existed prior to the date at which that chart begins and back to 1818 or thereabouts, when we have recorded prices?

A. I don't know. No, I would have to look that up.

Q. 56. Well, now, that chart (Plaintiffs' Exhibit 1) ends in 1940, and the low price was 3 cents in 1938 or thereabouts.

[fol. 112] A. Yes. Close to it.

Q. 57. And to what point had the price risen prior to Pearl Harbor?

A. My recollection is that it was in the neighborhood of 7 cents.

* * * * * * *

The Witness: Prior to Pearl Harbor.

Q. 58. And if the course of pepper had followed, if there had been no war and if the course of pepper had followed the course it has followed during the entire period shown by that chart, it would have continued to go up from that point?

A. That is right.

The Court: How long and how far?

The Witness: Well, when you get into the matter of predicting a price as of the time of Pearl Harbor your answer to that question depends on what you assume to be the case. Now, it is one thing to make a prediction of the price in view of the circumstances as they actually existed, that is, the war coming on, the supply of the Netherlands East Indies being shut off and limited to supplies from British Indies and to stocks.

The Court: Well, that was before Pearl Harbor was it not? Didn't the breaking out of the war in Europe have its effect?

[fol. 113] The Witness: No. You see, the Dutch Indies were open and we were getting in free supplies. Some of the largest shipments came in in that period of '39-'41.

Q. 59. You started to make a statement.

A. Yes. I was just recalling that we had shipments out of Java in December 1941. The war did not reach Java, you remember, until after Pearl Harbor.

Q. 60. Now, Mr. Archibald, do you know, if there had been no war or if the United States had not been involved in a world war and if the Dutch East Indies had not been involved in a world war, if there would have been any reason why the course of pepper prices would not have followed the general course that has been followed for the last 50 to 70 years?

A. I would expect it to work; it always has, and it is the normal procedure.

Q. 61. My precise question was, do you know of any reason why it would not work?

A. No, I don't know of any reason why it would not work.

(December 16th, p. 28)

X Q. 70. When was this high peak?

A. That was 1937. You see, 1938 it was about 6⅓ in the early part of the year; it declined to about 4⅓ at the end of the year.

Mr. Blackman: And it hit the bottom in 1938 or the early part of 1939; is that irght?

The Witness: In 1938, about the middle of '38.

[fol. 114] X Q. 71. So that based on recent prices you would not say that the OPA ceiling was unfairly low, would you?

A. The OPA ceiling was all right at the time it was imposed, in 1941, for that particular period. I remember the conferences at which the OPA ceiling price was set. And I remember the Government representative saying at that time that that was the price set because that was the prevailing market price at that time. And, then, the thing that our spice trade always had in the back of its head and objected to was the recollection of the statement that as conditions changed the price would be adjustgd. And, of course, that is what we were hollering about all through the later years of the war. It got scarce; the world prices kept going higher, and we kept making repeated representations to the OPA to increase the price so that we could do business. The prices were increased only after a great lapse of time, which made it very difficult for us.

X Q. 72. But you say that you don't think the OPA ceiling was unfairly low at the time it was imposed?

A. Not in 1941, no.

X Q. 73. And that refers to the 6½ cents ceiling?

A. That is right. 6¾ cents ceiling at that time, and later on 6½.

X Q. 74. Your comment would run to the 6½ cents ceiling, too?

[fol. 115] A. That is right, at that time.

X Q. 75. What was the condition which made the difference so that you think it became unfair later?

A. Because the supplies of pepper were being distributed and the world market price rose to such a high figure that we couldn't replace our supplies, so that we were going along on a small portion of our normal requirements trying to make a stockpile piece out at low prices, where

the stockpile could have been levelled at world market prices and kept us going at a better rate of consumption.

Mr. Rood: We all agree that the stocks in the United States at the time of Pearl Harbor were around 90 million pounds.

Mr. Blackman: A little more than that. About a hundred.

The Witness: That is right.

Mr. Rood: And that the average annual consumption in the United States was about 30 million.

Mr. Blackman: About, yes. One minute. I don't want to cause any misapprehension here by that concession. That was the consumption of the Continental United States, 30 million pounds a year. It is not 30 million pounds. It is more than that. It is about 35 I think.

The Witness: Figure about 15,000 long tons.

[fol. 116] Mr. Rood: The War Food Administrator tried to seize it all, as I recall.

Mr. Blackman: Yes.

Mr. Rood: And Mr. Blackman successfully obtained an injunction against him on the ground that that was beyond the scope of the Requisitioning Act.

(December 16th, p. 37)

[fol. 117] Redirect examination.

By Mr. Blackman:

R. D. Q. 94. Mr. Archibald, you spoke about the effect upon the speculative holders of pepper of this ceiling that was imposed in December 1941. Was there any Government action prior to the war which had the effect of breaking the market?

A. The margin requirements for a contract of pepper on the New York Produce Exchange were increased and that caused a certain amount of liquidation by people who could not afford to put up increased margin or did not want to.

R. D. Q. 95. And the manner in which that was invoked also had an effect, did it not?

A. Yes.

R. D. Q. 96. What was that increase that you speak of?

A. The margin for pepper had been, as I remember it.

about $250 a contract, a contract for 15 tons, and then it was raised to $1000 a contract.

* * * * * * *

[fol. 118] R. D. Q. 100. And that scared out a lot of the speculators?

A. That scared out some.

[fol. 119] (December 16th, p. 39)

Marietta Brown Corbitt, a witness produced on behalf of the plaintiffs, having been first duly sworn by the Court, was examined and testified as follows:

Direct examination.

By Mr. Blackman:

Q. 1. Mrs. Corbitt, what was your business up to a short period or a few weeks or months ago?

A. Handling the accounts of Commodities Trading Corporation.

Q. 4. Yes. But for a firm of accountants?

A. Clarke, Oakes & Greenwood.

Q. 5. That is a firm of certified public accountants in New York City?

A. Yes, sir.

Q. 6. You were an accountant in the employ of that firm for how many years?

A. Well, from 1934.

Q. 7. From 1935 to when?

A. Until December 1946. I mean, until——

Q. 8. Well, until a few weeks ago?

A. Until just recently.

Q. 9. You were recently married?

A. Yes.

Q. 10. Now, Mrs. Corbitt, during that time were the books of Commodities Trading Corporation kept by you?

[fol. 120] A. Yes.

Q. 11. Were they carefully and accurately kept?

A. Yes, sir.

Q. 12. And had you been a bookkeeper for years?

A. Yes, sir.

Q. 13. Will you refer to your records, please, and tell me whether Commodities Trading Corporation sold any white pepper to Argentina and at what times and at what prices?

A. December and January; December 1945, and the prices—were 30.93 and up to 32.31.

Q. 14. Do you know how the company was permitted to sell at that price under the OPA regulations?

A. The OPA regulations, as I recall, was cost plus a percentage, plus certain charges, that is, the cost of getting it to the steamer, etc.

Q. 15. Well, the fact was that we were permitted to make that price so much in excess of the local ceiling price because one of the provisions of the OPA regulation permitted the sale at cost plus certain additions?

A. Yes.

Q. 16. And the pepper had cost us that much or nearly that much, so we were permitted to sell at that price?

A. That is right.

The Court: I wonder when you bought it if it cost you so much.

[fol. 121] Q. 17. Can you tell us when it was bought?

Mr. Blackman: I think it was bought in '33.

A. Well, it was around 1933 or '34 that we bought that high-priced white pepper.

Q. 18. You remember that?

A. Yes, I do remember that.

Q. 19. The cost that the OPA permitted you to charge did not include your carrying charges, warehousing and things of that kind?

A. No, sir.

Q. 20. Just the original invoice price plus these small additions?

A. That is right.

The Court: How much pepper was it that you sold to Argentina at that time?

The Witness: About 35,000.

Q. 21. 35,000 pounds?

A. Yes, approximately.

Q. 22. In two or three shipments, were they?

A. Three shipments, Mr. Blackman.

Q. 23. (continuing) Can you tell me the average import cost of the specific black pepper which was requisitioned by the Government under Army requisition 197 on May 26, 1944?

A. 6.78 cents per pound.

The Court: (to witness) And will you tell us in each case when you bought this?

[fol. 122] A. From '33 through until 1936.

The Court: Is the price that you have given of 6.78 an average price or what?

The Witness: Yes, it is an average price of the various lots.

The Court: Of various purchases made?

The Witness: Yes.

The Court: Is that a weighted average? I mean, did you find not only that you paid so much at such and such a time but so much for so many pounds or tons?

The Witness: So many pounds.

The Court: So that your average is a weighted average?

The Witness: That is right.

Q. 26. Now, Mrs. Corbitt, will you tell me the average import cost of all the black pepper owned by Commodities Trading Corporation at the date of seizure?

A. That was 6.67 cents per pound.

Q. 27. How many pounds did you use in getting at this figure of 6.7?

A. Including the seized pepper, there were 16,153,000 pounds.

Q. 30. Now, Mrs. Corbitt, what was the average import cost of all black pepper which Commodities Trading Corporation owned at December 7, 1941?

A. 6.3549.

[fol. 123] Q. 31. That is, all these figures that you have been giving me are just what we paid for the pepper?

A. That is right.

Q. 32. They do not include handling or storage or overheads of any kinds?

A. No, nothing at all.

The Court: What is the cost of storing pepper per pound per year?

Mr. Blackman: About half a cent per pound. It is about 3 or 4 cents I think a bag per month, and a bag weighs 140, 130, 140 pounds.

Q. 33. That is correct, isn't it?

A. That is correct. Yes, Mr. Blackman.

Q. 34. Mrs. Corbitt, allowing for the prices that you have stated and allowing for warehousing at 3 cents per bag

per month, the insurance that you had to pay, interest at 5 per cent per annum, plus $25,000 per year for total executive costs, rent and overheads of that kind, can you tell me what was the total actual cost to the company of this pepper that was seized?

A. That would be 14.59.

Q. 38. This pepper that we bought was all kept in separate lots and carried on your books in separate lots so that you would know the precise cost to us and how long it was carried with respect to each particular purchase, do you not?

A. Yes, sir.

[fol. 124] Q. 39. We did not lump it together in a pile and sell from the pile?

A. No, sir.

Q. 40. But we kept this pepper separately with respect to each particular lot that we purchased?

A. That is right.

Q. 41. And we know exactly which ones of those lots the Army took when it made this seizure?

A. Yes, sir.

Q. 42. Now, this price of 14.59 that you have given me, is that the average cost of all of our pepper as well as the pepper that was seized?

A. Yes, it would be.

* * * * * * *

[fol. 125] Q. 45. Mrs. Corbitt, would you look at these papers I show you and tell me where you received them?

A. At 80 Broad Street, New York City.

Q. 46. You brought them up and gave them to me this morning?

A. That is right; yes, sir.

Q. 47. And they have been in the office of the Commodities Trading Corporation or Clarke, Oakes & Greenwood since they were received by mail?

A. Yes, sir.

Mr. Blackman: That is all.

Would you just hand them back to me, please.

(Witness hands papers to Mr. Blackman.)

Mr. Rood: What are these. The accounting papers?

Mr. Blackman: No. That is the Government offer to sell us pepper for 75 cents.

Cross-examination.

By Mr. Rood:

X Q. 48. Mrs. Corbitt, you say that you kept separate accounts so as to identify each lot of pepper from the time you bought it, so that when you sold pepper and made delivery you knew exactly which lot you were delivering and you were able to find out how much that lot had cost in your [fol. 126] books; is that right?

A. Yes, sir.

X Q. 49. Now in the case of this particular requisition, who decided which pepper, which lots of pepper were to be turned over to the Army?

A. Well, that was the men in charge of Commodities Trading Corporation, the owners of the pepper.

Mr. Blackman: You did not have anything to do with that yourself?

The Witness: No.

X Q. 50. But you knew that that decision was made in your office and not by the Army?

A. What do you mean? The decision to deliver certain lots of pepper?

X Q. 51. Yes.

A. Well, it had been made, yes.

X Q. 52. By the Commodities Trading Company management?

A. Well, they made their agreements.

X Q. 53. Yes. And they decided which lots of pepper were to be turned over from the warehouses for particular orders such as this one?

Mr. Blackman: Well, Mrs. Corbitt does not know the facts. I will state them for you, if you would like them.

[fol. 127] Mr. Blackman: The facts were these, that the Government wanted to get this pepper and wanted to get it quickly and asked us to facilitate them after they had made their formal requisition and were legally entitled to obtain the material. And we did assist them and got the pepper out so that they could get it. In the warehouse—you see, this was an enormous amount of pepper, 17 million pounds, and it was piled way up to the ceiling, in bags, and some of it was very hard to get at. Now, what we did was to pick out the bags that we wanted them to take and put them in

a position where it was easy for them to take, and then say, "Here you are, you take them." That is what they did.

Mr. Rood: Thank you.

Mr. Blackman: And I am saying, in doing that we did select bags so that we would get an average cost or as near an average cost as we could, so that there would be no question as to whether this was high-priced or low-priced pepper.

X Q. 54. Mrs. Corbitt, I show you some accounting tabulations and ask you if you made those up, these tables or tabulations of cost which the Commodities Trading Corporation submitted to the OPA to support an application to have the ceiling increased?

A. I did make them up.

[fol. 128] (December 16th, p. 56)

Redirect examination.

By Mr. Blackman:

R D Q. 63. In making up the figures that you gave in answer to my questions and in allowing for storage and interest and other carrying charges, including that $25,000, those overheads were applied to all the pepper that we had at the time at the end of each year; is that right?

A. Yes, Mr. Blackman, that is right.

R D Q. 64. Those are not the carrying charges applied against this particular pepper?

A. No.

R D Q. 65. Or only the amount of pepper that we had in April or May 1944?

A. No, that is the inventories on hand.

R D Q. 66. Yes. That is, at one time we had 25 million pounds of pepper; and these charges that you have applied here were divided by 25 million pounds to get the carrying charges for that particular year; is that right?

A. Yes, sir.

[fol. 129] (January 27, 1947, p. 317)

DANIEL C. GRIESHEIMER, produced as a witness on behalf of the Plaintiff, having first been duly sworn by the Commissioner, was examined and, in answer to interrogatories, testified as follows:

Direct examination.

By Mr. Blackman:

1 Q. Would you give your name and address to the stenographer, please?

A. My name is Daniel Cornelius Griesheimer.

I reside—I used to reside in Batavia in Java, in the Netherlands East Indies.

3 Q. How long did you reside there?

A. I came to this country in 1921.

4 Q. And prior to that you lived in Holland?

A. I lived in Holland—Amsterdam.

5 Q. You are a native of Holland?

A. I am a native of Holland, yes, sir.

[fol. 130] 6 Q. What is your business, Mr. Griesheimer?

A. My business in the Dutch East Indies—buying, purchasing and shipping Dutch East India produce, principally spices.

7 Q. And among those spices was pepper included?

A. Pepper was a prominent part of the business.

8 Q. As a matter of fact, pepper is the most important of all spices?

A. Yes, sir.

9 Q. In so far as bulk is concerned, and money value is concerned?

A. Yes.

10 Q. Mr. Griesheimer, in the course of your business and in order to carry it on properly, was it necessary for you to become familiar with the manner in which pepper is grown?

A. Yes, sir. As a matter of fact, business at present is such that it requires constant study and contact with producing centers.

11 Q. Where is black pepper produced?

A. In the southern part of the island of Sumatra.

12 Q. And that is known as what kind of pepper?

A. What is that?

13 Q. And that is known as what kind of pepper?

A. Exclusively black Lampong pepper—L-a-m-p-o-n-g.

[fol. 131] 14 Q. Well, is pepper grown in other parts of the world besides southern Sumatra?

A. It is.

15 Q. Where?

A. Producing places next to the Dutch East Indies are British India and French Indo-China.

16 Q. From what source do we in the United States obtain our black pepper?

A. Especially from the Dutch East Indies.

17 Q. Do we and have we ever, over a long number of years, obtained any substantial quantities from other sources?

A. We did from time to time from British India, if the market situation allowed the pepper to be shipped.

18 Q. How about China—French Indo-China? Do we receive any pepper from there?

A. No, practically never.

19 Q. Where does that go?

A. Because France made the arrangement that on pepper exported from French Indo-China, France has priority, that leads to the fact that practically all pepper goes to France.

20 Q. That is a small producing country as compared to Sumatra?

[fol. 132] A. Sure, sir.

21 Q. How about British India?

A. British India as a rule is producing a substantial crop of pepper; but the situation over there is different from the position in the Dutch East Indies, because the British India native himself consumes a large quantity of pepper, even to the extent that the crop is not sufficient and they have to import it at times.

22 Q. Although British India is the second largest producing center, it is itself in most years an importer?

A. Yes.

23 Q. That is due to the fact that its three or four hundred million people are pepper conscious?

A. Yes; whereas in the Dutch East Indies the native doesn't consume pepper.

24 Q. He raises it all for export?

A. Mostly for export, yes.

25 Q. In the course of your business, has it been necessary for you to follow the market and know what the prices of pepper are?

A. Yes, because our native Dutch is in the market.

26 Q. How long has that been the case?

A. Personally, I got a good deal of interest in pepper as soon as 1924, because I was then appointed as the staff employee having dealings with pepper.

[fol. 133] 27 Q. Are you connected with a firm that deals in pepper—a firm or corporation?

A. Yes, sir. I am the manager of the Catz Java Trading Company.

28 Q. That has headquarters where?

A. In Batavia, with branch offices all over the Dutch East Indies, especially in the Lampong districts, where we have our own buying places for pepper.

29 Q. For how long have you been the manager of that company?

A. I was the manager since 1928.

30 Q. And have you been continuously engaged in that business?

A. Yes, sir.

* * * * * * *

(January 27, 1947, p. 323)

42 Q. Now, will you please describe just generally the growing of pepper—how it is planted, how it is attended to, and how it is harvested?

A. The pepper gardens you will find in South Sumatra, for the majority have been planted out on areas that have [fol. 134] been taken out of the jungle. So, before the native is in a position to plant pepper, he has to clear the jungle, which is a very hard and troublesome work.

If he has obtained that soil, he plants out a pepper, which is a vine, and it takes that vine around four years before it bears fruit. That vine has to climb along a living supporting tree, which the native calls "dadap."

In the meantime, the native has to take the necessary trouble and care that this garden is kept clean, because if he would not do that the jungle would overpower his new plantation in a couple of months. I might even say that for people who do not know the troublesome situation, it

is unreasonable how soon the jungle will reclaim its original territory.

43 Q. Now, you did not start quite at the beginning, I believe, Mr. Griesheimer. Where and how does the native get that living tree on which he trains his pepper vine?

A. He has to plant it. As a matter of fact, he has to keep his eye on two kinds of growth—one, growing his tree, and the other, growing his pepper. He has to make a combination of the two, which means that before he goes out and tries to acquire some soil from the jungle he has to have made already some other work in order to keep all these things together.

44 Q. He has to transplant these trees?

[fol. 135] A. He has to transplant these trees, naturally, and after that he has to plant the vines of the pepper against the trees there.

45 Q. Now, after these pepper vines have lived the three or four years or so and have begun to bear, how long do they continue to bear?

A. This is completely dependent on circumstances, but my experience taught me that the average length a pepper vine lives is around 10 to 14 years, with an average of around 11 years—12 years.

46 Q. On what does that depend?

A. That depends principally on the care that is taken of the vine.

47 Q. If good care is taken——

A. (interposing) If good care is taken of the pepper vine, it might last as long as 14 or 15 years.

48 Q. Even with the best of care, will it last longer than that?

A. No. That is about the utmost a pepper vine can last.

49 Q. So, in order to keep up production of pepper, there must be constant planting of new pepper?

A. Yes, sir.

50 Q. To take the place of the pepper dying out each year?

[fols. 136-137] A. The native must be constantly ready to replace old vines with new ones.

* * * * * * *

[fol. 138] (January 27, 1947, p. 332)

73 Q. Mr. Griesheimer, what effect, if any, did the drop in prices that followed 1929 have upon the planting of new pepper?

A. The effect of the low prices was that the native grower started, or had to neglect the planting of the new gardens and the attention paid to the old ones.

[fol. 139] (January 27, 1947, p. 333)

77 Q. You referred to your making crop estimates. For how long had your company made estimates of the crop before the crop was harvested?

A. Well, I remember that since 1924 we always have been going in the interior and it was more or less a sport on our side to come out with the crop report before other houses.

78 Q. Your company was nearly always the first to come out?

A. Nearly always the first, and I might say with flattering, we have been dealing with established growers in the interior.

79 Q. You send men out through that part of the country to report that condition?

A. Yes; coming out and talking with natives to check the gardens.

80 Q. And, based on that, you have made estimates every year?

A. Yes.

81 Q. And have those estimates proven accurate to a high degree?

A. Yes, sir, indeed.

82 Q. And did you make an estimate for 1941?

A. Yes, sir, we did.

[fol. 140] 83 Q. Were you able to determine how accurate your estimate for 1941 was?

A. Well, we could not determine it because there was a war coming. The Japs came in, but I think my figures, as I issued them, were accurate.

84 Q. What was your estimate for 1941?

A. For 1941 my crop figures were between twenty-five and thirty-five thousand tons at the beginning. But we were more definite later and put a crop of 30,000 tons.

85 Q. How does that compare with the crops that were harvested in the preceding years, say two or three years prior to that?

A. The crop in 1938 and 1937 was rated even up to 50,000 tons—even above that figure.

86 Q. So that was a loss of about 40 per cent?

A. Forty per cent.

87 Q. A loss of about 40 per cent in production.

Well now, does the weather have anything to do with the production of pepper?

A. As a rule the weather has an influence on the pepper, but I remember that during the year 1941 the weather was very well to promote a nice pepper crop.

88 Q. The weather was favorable as you could expect in 1941?

A. The weather was favorable.

[fols. 141-142] 89 Q. Now, if there had been no interference with the natives in the planting of pepper subsequent to 1941, would the production in 1942, 1943, 1944 and 1945 have been greater or less than in 1941?

(January 27, 1947, p. 339).

A. Certainly should have been less, according to my theory.

93 Q. Why?

A. Because in 1942 the yield of the crop was still affected badly by the not planting out of new pepper vines, because of the low prices in 1938.

94 Q. Could anything have been done in 1942 that would have increased the yield in 1942?

A. No, because you had to rely entirely upon what was in the ground, and if people had been making new plantations it would not have been bearing in 1942.

95 Q. Would that condition have obtained in 1943?

A. Maybe during 1943 things might have been changing a little bit more favorably. But I expect that even for 1943 there wouldn't be any pepper crop bigger than 1941. As a matter of fact, with a most favorable situation, the crop would still run around 25,000 tons.

* * * * * * *

[fol. 143] (January 27, 1947, p. 343)

108 Q. Had there been planting of any substantial amount in 1940 and 1941 of new pepper?

A. In 1940, no, sir; certainly not.

109 Q. Had there been any substantial plantings in 1939?

A. No, sir.

110 Q. Or 1938?

A. Certainly not in 1938.

111 Q. 1938 and 1939 was where the low point was?

A. Yes.

(January 27, 1947, p. 349)

144 X Q. Your low pepper prices had come—well, you had a price of 4¼ cents in 1936—is that correct?

A. Yes.

145 X Q. Is that correct?

A. Yes. That might be correct.

146 X Q. And then it had gone up lightly in 1937 and [fol. 144] 1938, and down again in 1939?

A. Yes.

147 X Q. Had these been any planting in the years 1937 and 1938 on that upswing in price?

A. No. There was practically no planting.

(January 27, 1947, p. 350)

150 X Q. There has been some recovery in the prices in 1940?

A. Yes.

151 X Q. And still greater recovery in 1941?

A. In 1941 there was more attention to it, but in the last quarter of 1941 we haven't got much chance to go back to the higher price recovery because there was the war and the freight space for pepper was completely governed by the Government.

152 X Q. What season of the year do they plant the pepper vines?

A. It is the rainy season. That is around the month of January, February, March.

153 X Q. In other words, if they were going to plant as a result of the 1941 price, they would have done it in 1942?

A. They would have started.

154 X Q. And nothing happened in 1942 that you know of? [fol. 145] A. Well, something happened. That was when the Japanese came in the Dutch East Indies.

155 X Q. But nothing happened in planting of pepper?

A. I will give you an answer. It may be, according to the Japanese propaganda, the natives started to plant. But they certainly stopped, because the whole Japanese prosperity, as it was advertised, didn't come to much. Instead of planting pepper, he brought down his vines and starting planting foodstuffs.

[fol. 146] (November 25, 1947, p. 358)

MURRAY SQUIRES, a witness produced on behalf of the defendant, after having been duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

Direct examination.

By Mr. Barnes:

(p. 363)

31 Q. In the course of his testimony in this case, Mr. Catz stated that he had advised the OPA during meetings of that Industry Advisory Committee that the pepper industry could maintain pepper prices, black pepper prices, in the 20¢ to 30¢ price range, if price controls were lifted. Do you remember such representation as made by Mr. Catz?

A. I don't recall the specific instance, but it is my recollection that that statement was made.

32 Q. Was it made by Mr. Catz alone or by other members of the industry as well?

A. It is my recollection that it was the general belief of the industry.

[fol. 147] (November 25, 1947, p. 384)

92 Q. Mr. Squires, under the conditions which actually existed in this country on May 26, 1944, the date of the requisition involved in this proceeding, could any holder of pepper in the United States have sold it legally for any price in excess of the maximum prices set forth in revised Price Schedule No. 52? My question is limifed to whole black pepper.

A. Yes, by those persons who were described as wholesalers.

93 Q. But that was simply another level of price set forth?

A. Not in the same schedule, but in another regulation.

94 Q. In other words, if they met the qualification of wholesalers in Maximum Price Regulation 421, they were—

A. —permitted to sell pepper at prices in excess of the prices of RPS 52.

95 Q. Well, aside from that qualification, if a person was not a wholesaler and could not qualify as a wholesaler under Maximum Price Regulation 421, could he have legally

sold pepper at any prices in excess of those established by [fol. 148] Price Schedule 52?

A. No, he could not.

96 Q. Did Commodities Trading Corporation ever qualify as a wholesaler under the provisions of Maximum Price Regulation 421?

A. As I understand it, they were not able to qualify.

(November 25, 1947, p. 385)

98 Q. Mr. Squires, you spoke of certain talks and agreements or undertakings that took place in informal discussions prior to this increase in the price of pepper to 10¢, which the OPA fixed in October, 1944, wasn't it?

A. Yes, that is right.

99 Q. Now, as a matter of fact, that price was not raised until the OPA and the Department of Agiculture, acting together, had exacted certain agreements or promises from Commodities Trading Corporation with respect to the future sale of pepper held by it. Isn't that true?

A. The amendment was issued subsequent to those talks.

100 Q. Not until those agreements had been exacted?

[fol. 149] A. Well, yes, substantially that is what is was. I didn't want it to sound like a hold-up.

101 Q. And one of those exactions was that Commodities Trading Corporation would sell seven million pounds of pepper at the 10¢ level, which was proposed within the next two or three months?

A. Yes. I don't recall the exact number of months, but that is substantially correct.

102 Q. Doesn't the figure seven million pounds refresh your recollection?

A. I believe it was seven million pounds. I don't recall exactly the figure. It was a substantial amount of pepper.

103 Q. What was said, if anything, so far as you remember about what the other sellers, other owners, of pepper would be expected or required to do?

A. As I recall it, the other holders of pepper were going to be asked to sell in the same proportion as Commodities Trading Corporation.

104 Q. Well, the idea was that all of the holders of pepper would be expected to let go the greater part of their holdings, is that correct?

A. That is correct.

105 Q. And Commodities Trading Corporation did sell seven million pounds of pepper within two or three months [fols. 150-152] after the price was raised, did it not?

A. It is my understanding that they did live up to the agreement.

. . . . . .

[fol. 153] (November 25, 1947, p. 393)

140 Q. Mr. Squires, you said that during this period pepper couldn't be sold in the United States at prices higher than those set forth in Schedule 52. You mean the continental United States, don't you?

[fol. 154] Mr. Barnes: On the record.

A. Within the continental United States.

141 Q. It could be sold at higher prices in Hawaii, Puerto Rico, and Alaska, could it not?

A. Yes. Those territories had regulations of their own governing sales prices.

. . . . . .

[fol. 155] 145 Q. You spoke, Mr. Squires, of the fact that we didn't or couldn't become wholesalers and take advantage of the higher ceiling prices allowed to wholesalers. Why was that?

A. Because I understood you could not meet the requirements of a wholesaler as defined in MPR 421.

146 Q. That is, we had not ground our pepper or packaged it prior to the war?

A. No, sir, that was an entirely different classification. The definition of a wholesaler in MPR 421 did not relate to grinding of pepper but to the type of business in which you were engaged.

147 Q. Yes, and that is, if you had not been engaged in that type of business before the war, you had no right to sell as a wholesaler and obtain the higher ceiling prices that were allowed the wholesaler. Those were part of it?

A. Those were part of it. Those were part of the requirements to set you up as a wholesaler which you had to meet.

148 Q. We could not meet it because that was not the kind of business we had done?

A. Right.

149 Q. We had just imported in great quantities and sold to the wholesalers?

[fol. 156] A: That is correct.

150 Q. Now, as a matter of fact, the wholesalers were able in many cases to sell their pepper at 12¢ a pound or more ground and in barrels at the same time that the ceiling price for bulk dealers, as we were termed, was 6¢—6½¢?

A. For whole pepper.

151 Q. Yes. That is right, isn't it?

A. Yes.

152 Q. Now the cost of grinding is only a fraction of a cent, isn't it?

A. It is a small amount, yes, sir.

153 Q. It is less than half a cent a pound. And you were asked by Mr. Barnes about whether that wholesale price didn't include the cost of distribution and advertising and things of that kind. The situation during 1943 was such that, if anyone had given notice that he had a few thousand pounds of pepper to sell, a line would form outside of his place, wouldn't it?

A. Yes, that is right.

154 Q. Mr. Squires, during this period of great stringency, 1943, 1944, there was a product put on the market by large spice dealers and sold in substantial quantities that was called by various names, such as synthetic pepper or substitute pepper or imitation pepper, was there not?

A. Yes, there was quite a business done in that.

[fol. 157] 155Q. That commodity, or whatever you may call it—product—was made up usually of about one-fourth or one-fifth real ground black pepper and the remainder was parched corn or wheat or some neutral agent, was there not?

Mr. Barnes: Object to this as being beyond the scope of direct examination and upon the further ground that it relates to a subject already excluded by the Commissioner from proof in this case, and, if it is satisfactory to you, without repeating it, I would like to have it understood that that exception runs to this entire line of examination, Mr. Blackman.

A. Yes, that is true. May I add that it was also made of cottonseed hulls.

156 Q. Now that pepper was sold during that period at prices of 16¢ a pound and better, was it not?

A. Yes, that is approximately correct.

157 Q. At the same time that the ceiling price on the real pepper was 6½¢?

A. No, sir. Six and a half cents relates to whole pepper, not ground pepper.

158 Q. Yes. At the same time the whole black pepper was selling at 6½¢?

[fol. 158] A. That is right.

* * * * * * *

[fol. 159] 180 Q. You are familiar, are you not, with the [fol. 160] characteristics of pepper-growing, the length of time it takes between the planting and the bearing of pepper?

A. As I recall from what I read, it is about four years to maturity, isn't it?

181 Q. About six to seven years is my information, I believe.

A. I thought you meant from the time of planting to bearing. That is the age you are speaking of, isn't it?

182 Q. No, I am talking about from the time of planting to bearing—I mean substantial bearing. I think they get the first crop in about four years.

A. Yes, that is what I meant, from planting to bearing is about four years, but life about seven, I thought.

183 Q. You don't mean total life of seven?

A. Total bearing life of six—seven.

184 Q. That is substantially correct, but it doesn't reach its full normal production until about six or seven years.

A. That is correct.

185 Q. Now don't you know, as a matter of fact, that those three facts, the abnormally high price, the large plantings due to high prices, and the long time that it takes to gather the pepper after the vines are planted, resulted in the largest production the world has ever known in 1934, [fol. 161] 1935, 1936, and 1937?

A. I understand that it resulted in very heavy production. Whether or not it is record production I am not certain.

186 Q. But it was an abnormal production period?

A. Yes, abnormal.

187 Q. Do you know what effect the very low prices that obtained in those years had upon the planting of pepper?

A. Only a hearsay again, that it resulted in fewer plantings and poorer care of the vineyards or the plantations.

Mr. Barnes: Object, and move that it be stricken, on the ground that it is hearsay.

188 Q. Well, the reasonable price of pepper and the conditions that you had to deal with in the OPA were influenced by that kind of thing, were they not?

Mr. Barnes: What kind of thing, Mr. Blackman?
Mr. Blackman: The dearth of pepper.

189 Q. Why did you increase the price of pepper to 16¢ ultimately?

A. That was to secure supplies of pepper.

190 Q. And because you knew the dearth of supplies throughout the world?

A. Yes, that is right. No. Let's say available supplies, [fol. 162] because we don't know what there was in, say, the Dutch East Indies.

191 Q. Well, you had a pretty good idea, didn't you?

A. No, sir, we don't know today.

192 Q. You don't know exactly, but don't you know that the pepper was shipped out of the Dutch East Indies just as fast as they could possibly ship it for a year before the war?

A. Yes, I know that.

193 Q. In other words, they saw war coming and they wanted to dump their pepper on us. Is that right?

A. I presume that is correct, yes.

194 Q. Well, you know. You have made a study of this thing. You know that is a fact, don't you?

A. Yes, I think so.

* * * * * * *

[fol. 163] 201 Q. Do you know that when the war seemed to be fairly im-inent and a year or so before the war, before Japan got into the war, there was a large amount of buying of futures of pepper?

A. Yes, there was.

202 Q. And the market went up very rapidly from about 3¢ to, oh, nearly 8¢, wasn't it?

A. Three years prior to 1941 or 1939? You said prior to the war.

[fol. 164] 203 Q. Prior to 1941?

A. No, sir.

204 Q. I think it was in 1939 and 1940.

A. I was just trying to reconcile that with the records here.

205 Q. Yes, surely. Your prices there will show when it happened.

206 Q. I see by this chart that it went up from 3.8¢ in the latter part of 1940 to 7.2¢ in May, 1941. This is the period that I had in mind. The spread I gave was a little larger than the figures bear me out. Now that was due to a large number of persons in the United States buying pepper against the possibility of war. Is that right?

A. Yes, during that period there was a general acquisition of all merchandise, including pepper.

207 Q. And do you know what steps, if any, Mr. Leon Henderson, who was Price Administrator at that time, took to depress the price or stop that speculation?

A. In August, 1941, the Exchange was asked to raise its margin requirements.

208 Q. Well, quadrupled them, wasn't it?

[fol. 165] A. It was made $1,000; I think that it quadrupled, yes.

209 Q. Previously it had been $250 a contract and then Mr. Henderson cracked down, as he expressed it, and demanded that they raise the price from $250 to $1,000. Wasn't that it?

A. Yes, I understand those are the approximate figures.

210 Q. And he also at that time gave notice to persons who were buying commodities that they would not be allowed to make war profits?

Mr. Barnes: That was before you went with the OPA, was it not, Mr. Squires?

The Witness: That was before my time, yes.

Mr. Barnes: I object to it on the ground that it is hearsay.

Mr. Blackman: I think the witness is competent to state on that. It is part of the history of his department. You have asked him many questions with respect to matters previous to his connection with it. I will ask for the answer, and, if the Court doesn't want it, all right.

A. There were warnings, yes, issued by the Price Administrator.

211 Q. Now, Mr. Squires, you have stated that the price [fol. 166] or the cost rather to Commodities Trading Company is shown in a letter of the OPA and was in agreement

with what you found from your examination of the books of Commodities Trading Corporation with respect to the cost to it of the pepper that it had on hand. Now what basis for computation did you use there?

A. First in and first out.

212 Q. That is, you didn't find any inaccuracies in the accounts of Commodities Trading Corporation?

A. None whatsoever.

213 Q. But their books showed a cost of their pepper two or three times or three or four times the cost that you developed?

A. Depending on the method of accounting used.

214 Q. Yes, and the difference was due to the difference in accounting method?

A. That is correct.

215 Q. Now what you did was to take what is known in accounting as the first in, first out method?

A. Yes, sir.

216 Q. And every ton of pepper that was sold by Commodities Trading Corporation you assumed or offset against the earliest purchase of pepper that it had on hand when it made that sale?

A. In effect, yes, that is right.

[fol. 167] 217 Q. And in so doing you developed a loss of hundreds of thousands of dollars by Commodities Trading Corporation with respect to the pepper that it had bought at 6¢ and 7¢, 5¢, 6¢, and 7¢, in the earliest years of its dealings. Is that right?

A. No, that is not correct, because our accounting period did not go that far back.

(November 25, 1947, p. 412)

249 Q. Mr. Squires, referring to your work sheets, will you please describe briefly how you proceeded to develop the average cost of the pepper that we had on hand in 1944?

A. Beginning with the date of February 3, 1942, we worked backward.

250 Q. Wait a minute. Beginning with the date of February 3, 1942?

A. Yes.

251 Q. You computed that we had on hand at that time how much pepper?

A. We computed that you had on hand 19,545,830 pounds of pepper, of whole black pepper.

252 Q. Then starting with that figure, what did you do next?

A. We recorded all purchases beginning on February 3, 1942, and working backward until a total record of pur-
[fol. 168] chases of 19,545,830 pounds had been recorded.

253 Q. And when did you stop by that method, what date?

A. September 24, 1936, which appeared to be the earliest purchase taken.

254 Q. Well, you knew, as a matter of fact, that a very large proportion of the pepper that we had on hand in 1944 had been purchased before that date?

A. Yes, that is right.

255 Q. But you took no account of what we actually paid for the pepper bought prior to the date you have stated?

A. We took no account of it.

257 Q. Yes, but your procedure not only did not take into account what we paid for pepper bought prior to 1936 or to
[fol. 169] your date in 1936—I think it was September, 1936—and still on hand, but it would not take account either of the storage charges and other overhead costs that we had in connection with that pepper from 1933 to September, 1936?

A. No, sir, it would not take into account that storage.

Redirect examination.

By Mr. Barnes:

258 Q. Mr. Squires, just one or two questions. You referred during the course of your cross examination to a chart that was attached to one of the plaintiff's claims. The chart you referred to is attached to Defendant's Exhibit 2, and is marked Exhibit B. It is a large photostat of The Economic Factors Affecting Prices of Black Pepper During the Fifty-one Years, 1890-1941?

A. Correct.

(November 25, 1947, p. 415)

261 Q. Now I just want to clarify a few points with respect to this audit, Mr. Squires. You have described how, by the application of the first in and first out rule, you computed the cost to the plaintiff of the 19,545,830 pounds of pepper, and I take it that you added to that the charges or allowances for storage, interest, and loss of weight—is that correct—and weighing out?

[fol. 170] A. Yes, that is right.

262 Q. And that gave you the total figure which appears on the second page of the letter or the additional charges of .006232 dollars per pound, which appears on the second page of the letter?

A. That is correct.

263 Q. And allowing for those, the cost to the plaintiff of its pepper you computed at slightly over six and one-tenth cents a pound on October 4, 1943?

A. Yes, that is right.

* * * * * * *

Recross-examination.

By Mr. Blackman:

264 Q. Those additional costs concerning which you have just testified in answer to Mr. Barnes didn't include anything for so-called general overhead, such as rent or salaries of officers or anything except what are known as direct costs?

A. The- did not include the indirect costs which you mentioned.

265 Q. Nor anything for interest?

A. Yes, interest is included.

266 Q. At what percent?

A. Interest, twenty months at ⅛ percent per month.

* * * * * * *

[fol. 171] 272 Q. That would be one and a third percent a year?

[fols. 172-173] A. Yes. That was also because of the interest rates as shown in your letter of February 15, 1944.

273 Q. Those interest rates were the interest rates that we were actually paying.

A. Well, I presume so.

274 Q. Yes. Now you know, however—rather, you knew that the banks were not lending us money on any such low rates of interest on this pepper. The banks had guarantees of all the officers of the company, whose combined wealth was, oh, upwards of ten million dollars, and they also had Stock Exchange collateral up in addition to the pepper. Each one of us put up his percentage of the amount due the bank and the stock, the Stock Exchange Collateral. You understood that was the way?

A. Of Course. That, of course, is the cost of the loan.

* * * * * * *

[fol. 174] JOHN W. KONVALINKA, produced as a witness on behalf of the plaintiffs, having first been duly sworn by the Commissioner, was examined and, in answer to interrogatories, testified as follows:

Direct examination.

(p. 431)

By Mr. Blackman:

1 Q. Give your name and address to the reporter, please, sir.

A. John W. Konvalinka. My address is 233 Broadway, New York, care of Irving Trust Company.

2 Q. Mr. Konvalinka, what is your business?

A. I am Vice-President of the Irving Trust Company.

4 Q. For how long have you held that position?

A. About nine years.

5 Q. And for how long have you been in the banking business?

A. Over 30 years.

6 Q. For how long have you been connected with the Irving Trust Company?

A. Over 30 years.

[fol. 175] 7 Q. What have been your duties, Mr. Konvalinka?

A. Well, my specific duties have been the loaning of funds on credit.

8 Q. And in connection with that, do you determine the interest rates to be charged?

(p. 432)

A. We are aware of the market interest rates on all types of loans.

9 Q. Are they regular market rates, competitive market in New York?

A. Yes.

10 Q. The banks compete with each other for good loans?

A. Yes.

Mr. Barnes: And bad ones, too, sometimes.

Mr. Blackman: Well, they do not compete for the bad ones.

11 Q. And for how long have those been your duties, Mr. Konvalinka?

A. Oh, about 20 years.

12 Q. And have you been familiar with those market rates for as far back as 1933?

A. Yes.

13 Q. Does your bank loan and is it one of the large lenders on commodities?

A. We do.

[fol. 176] 14 Q. On what kind of commodities do you loan? Just mention a few of them.

A. Well, we principally loan on commodities such as butter, eggs, poultry. Those are the principal commodities.

15 Q. Did you loan to the Commodities Trading Corporation on its pepper?

A. Yes, we did.

(p. 433)

16 Q. And was the pepper that is the subject of this action pepper upon which you had made a loan and held a loan?

A. Yes.

17 Q. For how long have you been familiar with the market rates of interest on loans on commodities?

A. About 16 years.

18 Q. Will you please state what those market rates were, beginning, say, with 1933?

Mr. Barnes: I object to this as being completely immaterial.

(p. 437)

Commissioner Gyles: As far as I am concerned, I will limit it to the interest actually paid—not what the market was. That is the ruling, and you are entitled to an exception, and you are entitled to state in a concise form your proposal to prove by this witness if he were allowed to testify.

[fol. 177] Mr. Blackman: I respectfully except, your Honor.

And I propose to prove by this witness that the market rate for interest on a loan on whole black pepper would not have been less than five per cent at any year from 1933 to 1947 both inclusive, which is the period that the bank loaned on this pepper.

(p. 438)

Commissioner Gyles: All right, sir. You have finished that. Let us go on to something else.

By Mr. Blackman:

19 Q. Now, Mr. Konvalinka, your bank, you said, did loan to the Commodities Trading Corporation on this pepper?

A. Yes.

20 Q. What security did you have for that loan?

A. Well, first, we had the pepper. Then we had a margin of 25 per cent in first-class securities.

21 Q. Stock Exchange securities?

A. Stock Exchange securities.

22 Q. Stocks and bonds?

A. Stocks and bonds.

. . . . . .

[fols. 178-180] (p. 439)

24 Q. Were these stockholders who gave you the guarantees good for the amount that they guaranteed, according to the information of the bank?

A. We knew the guarantors were amply responsible for the guarantees.

(p. 440)

25 Q. Mr. Konvalinka, were those stockholders of the Commodities Trading Corporation large depositors with your bank throughout this period?

A. Yes, they were.

27 Q. To what extent were they depositors with your bank?

A. The affiliated balances of those interested in this company at the time these loans were on our books averaged upwards of $500,000.

. . . . . .

[fol. 181] (p. 451)

Edward L. Blackman, a witness produced by the plaintiffs, having first been duly sworn by the Commissioner, testified as follows:

Colloquy Between Counsel and Commissioner

Mr. Blackman: The testimony given by the company has been that there

[fol. 182] (p. 452)

were upwards of seventeen million pounds of pepper held by it at the outbreak of the war. At the last hearing Mr.

Squires, a Government witness, testified that he had examined the books of the company and that the company had a larger amount of pepper than seventeen million pounds. I forget the exact amount.

I am familiar with the situation. I was very active in the management of this company, and the explanation of the difference is this: We had twenty-one million pounds of pepper at the outbreak of the war; but we had sold four million pounds, and our witnesses testified to the net amount of pepper that we had and not the gross amount. We had sold four million pounds for future delivery, and that was the situation in December, 1941. We delivered two million pounds of that pepper, and in March, 1942, at which time the Government witnesses testified to quantities, we actually had in our possession nineteen million pounds of pepper. But we had commitments which we had made prior to the outbreak of the war for the sale of two millions more, which brought us back to the seventeen millions that the company witnesses have testified to throughout.

Now, I wish to introduce in evidence offers that the Government made to me and to all the stockholders of Commodities Trading Corporation in November, 1946, offering to sell to us certain large quantities of pepper for 75 cents per pound.

[fol. 183] Mr. Barnes (p. 453): I object to any proof with respect to offers, your Honor, as not being competent evidence of value. And I further object on the ground that this is something which relates to transactions which took place two and a half years after the requisition.

Commissioner Gyles: These offers were mere offers?

Mr. Blackman: These were offers——

Commissioner Gyles (interposing): Not sales?

Mr. Blackman: No, sir.

Commissioner Gyles: We cannot receive the offers—mere offers.

Mr. Blackman: This offer was accepted by me. I never got the pepper. I will explain that. But this offer was accepted by me.

Commissioner Gyles: Well, if it was an offer that was accepted, that may throw a different light on it. Under the ruling of the Supreme Court, we understand that offers do not go in.

Mr. Blackman: This is not an ordinary offer. This is an offer by the Government itself to sell us back this pepper for 75 cents per pound.

Commissioner Gyles: You accepted it?

Mr. Blackman: I accepted it.

Commissioner Gyles (p. 454): What is the objection to that, Mr. Barnes?

[fol. 184] Mr. Barnes: Until we find out more about this —he said he never got the pepper, and there may not be a completed contract. It is still a transaction two and a half years after the requisition. The requisition took place in March, I think, of 1944.

Commissioner Gyles (p. 455): You go ahead and make your proposal of proof.

Mr. Blackman (p. 457): I ask to have marked for identi-

[fol. 185] fication this paper dated November 16, 1946.

(The document, dated November 16, 1946, above referred to, marked "Plaintiff's Exhibit No. 5 for identification," is filed in connection with this case.)

Mr. Blackman: I wish to prove, your Honor, that this paper was received by me through the mails in the regular course; that prior to its receipt I had had conversations with Mr. Pryor, who was in charge of the Spice Division of the Department of Agriculture, and he told me that such an offer as is disclosed by this paper would be made; and I discussed with him the number of pounds of pepper that each of the stockholders of Commodities Trading Corporation would be entitled to purchase; this offer was being considered an offer of importance and of value to the persons to whom it was made; I accepted by telegraph the offer that came to me and complied with the preliminary directions.

Now, on that statement, I will offer the paper in evidence.

Commissioner Gyles: It may be marked for identification in connection with the proposal of proof.

Mr. Blackman: Is it rejected, sir?

Commissioner Gyles: It is rejected and marked for identification.

* * * * * * *

[fol. 186] Mr. Blackman: I also offer in evidence similar papers which were received at the same time by other stock-

holders of Commodities Trading Corporation in amounts that had been agreed upon between Mr. Pryor and myself. I offer the paper and the covering letter of Mr. Pryor. I haven't them all here, but I offer three of them as samples.

Commissioner Gyles: Admitted for identification. Mark them for identification in connection with the proposal of proof.

Mr. Barnes: I would like to add to my objection with respect to these that they have not been proved. They are addressed to persons other than Mr. Blackman and those persons are not in court, and an offer of proof cannot be made as to what they would testify to. I want to make my position clear in the record.

(Offers to stockholders, and the covering letter from Mr. Pryor, above referred to, marked "Plaintiffs' Exhibits Nos. 6-A, 6-B and 6-C for identification," are filed in connection with this case.)

Mr. Blackman: I wish to state that these papers are the identical papers that were produced by Mrs. Corbitt at the hearing in New York to which I referred, and have been in my possession ever since.

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[fol. 187] (p. 463)

Now, pursuant to our stipulation, I offer in evidence the affidavits filed by the Government in connection with the injunction suit to which we have referred.

• • • • • • •

[fol. 188] Commissioner Gyles: I do not want the affidavits, anyway. I want the proof.

Mr. Blackman: These are admissions under oath by Government officials of the facts which I wish to prove.

Commissioner Gyles: Well, bring the witnesses in court.

Mr. Blackman: That would be impossible, almost, at this time. They are scattered. The OPA is disbanded. But these affidavits are statements under oath by the people selected by the Government in charge of these matters.

Commissioner Gyles: I think maybe you had better just take an exception and file them for identification. I do not want to receive affidavits in this. I want testimony.

Mr. Blackman: Your Honor, we are not offering these as our affidavits in place of the sworn testimony of a witness

before your Honor. But this is an admission under oath by a Government official with respect to the very matters [fol. 189] that are in dispute here. That is certainly competent evidence in any court.

Commissioner Gyles (p. 466): I do not know. I will rule just as I have ruled, that they are rejected, and I will study the things. They will be here for identification, and I will see what conclusion I later reach. But I do not think they are acceptable.

If you have evidence that the Government has, make the call on the Government to get the original documents, or call witnesses to testify.

Mr. Blackman: Mr. Barnes does not make any objection that these are not the original documents. He has furnished these to me himself.

Commissioner Gyles: Well, as I understand it, the objection made was on the ground that it is not the best evidence.

What is your objection, Mr. Barnes?

Mr. Barnes: That is right, sir. That is one of the grounds of my objection.

Mr. Blackman: You do not object that these are not originals, but are copies.

Mr. Barnes: I admit that these are true copies of the affidavits in question.

• • • • • • •

[fol. 190] (p. 467)

Mr. Blackman: I offer in evidence affidavit of Ralph W. Olmstead, verified 25th day of March, 1944, and attached to stipulation between the parties, together with the exhibit attached to his affidavit.

(p. 468)

So, if I may, I will offer the affidavit of Fletcher H. Long, verified the 3rd day of March, 1944, another of the affidavits in this Paragraph K of our stipulation.

[fol. 191] I offer the affidavit of Carl A. Hardigg, Brigadier General, Quartermaster Corps, verified the 28th day of March, 1944.

I offer the affidavit for E. F. Ney, Captain of Supply Corps of the Navy, verified the 25th day of April, 1944.

I offer the affidavit of Harold C. Albin, Chief of the Special Commodities Branch, Office of Distribution, Food Administration, verified the 15th day of May, 1944.

Mr. Barnes: I assume that you include with that the attachments referred to.

Mr. Blackman: No.

Mr. Barnes (p. 469): Your Honor, I object on the ground of incompleteness.

Commissioner Gyles: If you put in the affidavits, I am going to read the affidavits. (p. 469)

Mr. Blackman: Surely. But I am offering the affidavit encloses something.

Mr. Barnes: I made the further objection on the ground that Mr. Blackman is offering only a partial document, and I object under the rule of completeness.

Commissioner Gyles: If they are considered, they will be considered—the whole thing. I will not consider a piece of an affidavit.

Mr. Blackman: I am offering the entire affidavit. He has a statement enclosing a letter which has no materiality to my case.

[fol. 192] Mr. Barnes: Your Honor, on the record, very briefly, Mr. Blackman stated he did not want to offer all of these. Except for the omission of the exhibits to this last affidavit, he has offered every document included in this exhibit, except one one-page affidavit.

Mr. Blackman (p. 471): That is my case, with this exception, that if your Honor rules out the affidavits of these Generals and Captains——

Commissioner Gyles (interposing): I have already ruled them out. The only question I have is to study them, with the idea that I may possibly decide to rule them in.

Mr. Blackman: Then I would like to reserve the right to call these people and produce them here.

[fols. 193-196] Mr. Blackman (p. 472): But I stated that I was closing subject to that matter.

Commissioner Gyles: You cannot close subject to what I may determine in studying the case. If you have testimony to offer, offer it.

Mr. Blackman: I respectfully except.

Commissioner Gyles: You have excepted.

Mr. Blackman: But I am excepting to this ruling also. It seems to me that that is putting an unfair burden on me.

Commissioner Gyles: No, sir. The burden of proof is on you, and I have already ruled them out. If you have other evidence, go and get them. I am not shutting you out. But get them now.

Mr. Blackman: I cannot get them today.

Commissioner Gyles: You may not be able to get them today; but get them quickly.

Mr. Blackman: Do you wish to put me to all the trouble and the Government officials to all the trouble of being called?

Commissioner Gyles: I am only making the ruling. I cannot help what the effect of the ruling is.

Mr. Blackman: Can we not wait until you have made that ruling?

Commissioner Gyles: No; because I have to study those affidavits in connection with the case.

* * * * * * *

[fol. 197] (p. 476)

Mr. Barnes: I would now like to offer Defendant's Exhibit Number 3, which is a letter to the plaintiff from the Administrator of the Office of Price Administration, dated March 11, 1944. This relates to the petition which you have just rejected—is a formal rejection of that. I am offering this as part of that transaction, but, in addition, for another purpose.

The witness who testified in New Orleans stated that this document set forth accurately the results of an audit which he conducted of plaintiff's books with respect to the

[fol. 198] (p. 477)

cost of this pepper to plaintiff; and this letter sets forth in summary form his findings; and I am offering it for that dual purpose.

Commissioner Gyles: One minute! That is an audit?

Mr. Barnes: Yes, sir.

Commissioner Gyles: And it was introduced, I presume, or offered. Did you have the man on the stand who made the audit?

Mr. Barnes: Yes, sir.

Commissioner Gyles: That would admit it in evidence. It would not be admissible without his being on the stand. It is admitted.

Mr. Blackman (p. 478): May I state my objection?

Commissioner Gyles: Yes.

Mr. Blackman: This letter is a self-serving declaration by the head of the OPA, and the audit of which Mr. Barnes speaks was not an audit in any proper sense, and was so

stated by the witness. He did not take the cost of our pepper, nor did he follow any recognized system of bookkeeping. He testified that what he did was to take the amount of pepper that we had on hand at the beginning of the war, and in March, 1942, and he found that there were nineteen million pounds, and he went back, took 19,000,000 pounds of purchases and added them up and took that as the cost of the nineteen million pounds that we had, which was ridiculous.

[fol. 199] (p. 478)

Commissioner Gyles: Well, it may be; but I do not think the objection excludes the papers. It goes to the weight of it. We might not be able to give any weight to it.

Mr. Blackman: But I think it goes further than that. This paper is a self-serving declaration from the OPA to us.

Commissioner Gyles: That will affect its weight. The Court may not give any weight to it. It may give light weight to it. We are supposed, in studying these papers, to know what to do with them.

Mr. Blackman: Of course, sir. But this has no weight.

Commissioner Gyles: I cannot exclude it if the man was on the stand who made it. I will let that go to the weight. Just make your exception. (p. 479)

Mr. Blackman: All right. I except.

(The document previously marked for identification as Defendant's Exhibit No. 3 and filed in connection with this case, was at this point received in evidence.

Mr. Barnes: Your Honor, I would now like to offer Defendant's Exhibit Number 4, a letter to the Office of Price Administration, signed by Mr. Edward L. Blackman, dated October 28, 1943, and, as part of the exhibit, the attachments to the letter, including an application for adjustment of maximum price for goods sold under Government contracts, and asking for the establishment of a ceiling price with respect to prospective sale of one million pounds of black pepper to the War Department.

[fol. 200] (p. 479)

I might say, your Honor, in these applications the plaintiff is asking for the establishment of a price at which it indicates it would be willing to sell, which is substantially lower than the price it is seeking in this suit. These are practically contemporaneous applications filed by the plain-

tiff, and it is asking for a price substantially lower than the price it is seeking here. I think they are definitely material and relevant documents.

Commissioner Gyles: Now, these are letters by the plaintiff. You had a witness on the stand who had these letters and you offered them through this witness, or how

(p. 480)

were they offered? I want to find out why cross examination was not had.

Mr. Barnes: These documents were offered through the OPA, the man who received them and who acted upon them, and he stated that he received them and the action which he took with respect to them.

Commissioner Gyles: I think I would have to receive those. The man who received the letters was on the witness stand and subject to cross examination. That makes them admissible in evidence, does it not?

Mr. Blackman: I think not, sir. These were letters which we sent for an entirely different purpose. We stated that we did not wish to dispose of any of our pepper, that we felt it was a wonderful investment and we wanted to keep it; but that the Army had notified us that it was in need of

[fol. 201] (p. 480)

this pepper and we asked permission to sell to the Army at the price which the Army offered us, and that was denied.

Commissioner Gyles: I think, under the circumstances, that is competent testimony so far as the admissibility is concerned. Now, the weight to be given to it is something else.

Mr. Blackman: Well, your Honor, it cannot be admissible except, it seems to me, for the purpose of contradiction.

Commissioner Gyles: Well, it may be that——

Mr. Blackman (Interposing): How does it contradict our claim here for us to say we are willing to be gracious and public spirited and sell to the Army at the price they are willing to pay us? (p. 481)

Commissioner Gyles: I understand that part of it. But I think where you have the man on the stand to whom it was written, concerning the price of the commodity, it may have some weight.

Mr. Blackman: I did not have the man on the stand. Mr. Barnes put the man on the stand. What could I have asked him concerning my own letter?

Commissioner Gyles: I do not know. I admit the letter.

Mr. Blackman: I respectfully except.

Commissioner Gyles: Yes, sir.

(The document previously marked for identification as Defendant's Exhibit No. 4, and filed in connection with this case, was at this point received in evidence.)

[fol. 202] Mr. Barnes (p. 481): I should now like to offer Defendant's Exhibit Number 5 for identification, which is another petition for adjustment of the OPA price ceiling.

Commissioner Gyles: Is it the same situation?

Mr. Barnes: Filed by the plaintiff—yes, sir. This was filed shortly after the requisition involved, on August 16, 1944.

Commissioner Gyles: When was the requisition?

Mr. Barnes: May 26, 1944.

Commissioner Gyles: Well, we will receive that, with the same condition.

(p. 482)

Mr. Blackman: May I say just a word?

Commissioner Gyles: Yes.

Mr. Blackman: That is a comparable document to the first one which Mr. Barnes offered, and which you did not receive. It is an application petition to the OPA for an increase in price.

Now, of course, an increase in price by the OPA is based on entirely different considerations from that to which we are entitled in a court of law. We told them what a hard position we were in, and asked them to give us a little relief. We knew they would not give us what we thought we were entitled to. It seems to me that that is entirely irrelevant. It is no contradiction of anything we have claimed here.

Commissioner Gyles: Unless it affects and bears upon the price, it will not affect the Court. That is the only question I have, as I understand it. Unless it binds plain-[fol. 203] tiff in some way in connection with the price of the commodity at that time—the value at that time—it will not help the Court any. I propose to measure all of these things by that.

Mr. Blackman: That has not a word about the value at that time.

Commissioner Gyles: Then it will not harm you if it is in.

Mr. Blackman: No, sir, except that we want to restrict the record.

Commissioner Gyles (p. 483): Well, I am not so much worried about restricting the record as I am in getting enough evidence to find out what the true value of this pepper was. That is the only thing that concerns me.

I will receive those things on that basis.

Mr. Blackman: I respectfully except.

(The document previously marked for identification as Defendant's Exhibit No. 5, and filed in connection with this case, was at this point received in evidence.)

[fol. 204] (p. 491)

Commissioner Gyles: I believe this hearing was called this morning for the purpose of hearing any further proof that plaintiffs have to offer.

Mr. Blackman: Yes, sir.

(p. 492)

The plaintiff, unfortunately, has no further proof. We were unable to obtain the presence of the witnesses that were referred to at the last hearing. I received a very courteous letter from the Attorney General stating that he had ascertained that Colonel Olmstead, who was my principal witness, who was the man that authorized requisition of this pepper in New York, and who had to comply with the regulations before doing so—and he swore that he had so complied, including having made all reasonable efforts to purchase the pepper, without success—that he was in China at the present time, so I shall not ask delay to get his testimony.

I found, after some difficulty, that Mr. Albin, who was second in command to Colonel Olmstead, and who was with the War Food Administration at the time the pepper in question was seized, or sought to be seized—that he was still with the Department of Agriculture. For three days I called his office several times a day and was told that he was there but that he could not speak to me at that time, that he was engaged but would call me back. He never called back, and yesterday I called again and was told that

he had left his office yesterday morning about 10 o'clock, that he had left

[fol. 205] (p. 492)

his office for the day, and that he was leaving the city in a few hours and would be gone for several days:

In view of the fact that I have reviewed this testimony and I think the plaintiffs' witnesses called on the main case have probably sufficiently covered the matter, I shall

(p. 493)

rest on that, and on the hope that the Commissioner may finally decide that these affidavits are admissible in evidence, and I shall not ask any opportunity to call any further witnesses.

Commissioner Gyles: Very well, sir.

[fol. 206] IN THE COURT OF CLAIMS OF THE UNITED STATES

[Title omitted]

STIPULATION OF FACTS

Paragraph 15 of above Stipulation of Facts between the Parties

15. On or about March 10, 1944, the United States, acting through the War Food Administrator, requisitioned and took possession of approximately 3,964,800 pounds of whole pepper allegedly owned by plaintiff. On or about March 22, 1944, plaintiff instituted an action in the District Court of the United States for the District of Columbia, entitled "Commodities Trading Corporation, a Delaware corporation, 80 Broad Street, New York, N. Y. against Federal Surplus Commodities Corporation; Claude R. Wickard, Individually, and as Secretary of Agriculture; Marvin Jones, Individually and as War Food Administrator; Lee Marshall, Individually and as Director of Supply, Office of Distribution, War Food Administration; Ralph W. Olmstead, Indi-

[fol. 207] vidually and as Deputy Director of Supply, Office of Distribution, War Food Administration; Fletcher H. Long, Individually and as Chief of Spice Section of Special Commodities Branch of War Food Administration; H. C. Albin, Individually and as Chief of Special Commodities Branch of War Food Administration; and Irving Trust Company," being Civil Action No. 23573, praying for an

injunction to prevent the removal of the requisitioned pepper, on the ground that such requisition was not authorized by the Act of October 16, 1941, under which such pepper was purportedly requisitioned, in that said pepper did not constitute "military or naval equipment, supplies, or munitions, as component parts thereof, or machinery, tools or materials necessary for the manufacture, servicing, or operation of such equipment, supplies, or munitions," and that it was requisitioned for civilian use rather than for the defense of the United States.

An answer on behalf of the governmental defendants and a motion for summary judgment on their behalf were filed in such action on or about May 22, 1944. Filed herewith, marked Joint Exhibit "K", and by this reference made a part hereof, is a true and correct copy of such motion for summary judgment and of the affidavits filed in support thereof.

Defendant specifically objects to the materiality or relevance in this proceeding of any of the facts stated in this paragraph 15, or of any of the documents contained in [fol. 208] Joint Exhibit "K". Its only purpose in making this stipulation is to simplify plaintiff's proof thereof in the event that this objection is overruled.

The Following Portions of the Affidavit of Fletcher H. Long, One of the Papers Contained in Joint Exhibit "K" Referred to in said Paragraph 15 of Stipulation of Facts.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

Civil Action No. 23573

COMMODITIES TRADING CORPORATION, Plaintiff,

v.

FEDERAL SURPLUS COMMODITIES CORPORATION, et al., Defendants

AFFIDAVIT

DISTRICT OF COLUMBIA,
City of Washington, ss:

Fletcher H. Long, being first duly sworn, deposes and says that he is Chief of the Spice Section of the Special Commodi-

ties Branch of the Office of Distribution (formerly Food Distribution Administration), War Food Administration, a part of the United States Department of Agriculture and that he has been Chief of this section since April 1943. Prior to that time affiant was associated with McCormick & Co., [fol. 209] Inc. of Baltimore, Maryland, the largest spice and extract company in the United States. Affiant was manager of the spice department and was with that company for 26 years. Affiant further states that one of the commodities handled by the Spice Section of the Special Commodities Branch is pepper, both black and white, and that in connection with handling this commodity, the Special Commodities Branch has the responsibility for recommending the issuance of food orders under the Second War Powers Act to regulate the industry and also has the responsibility for procuring necessary stocks of pepper in the form required for lend-lease shipments to foreign countries.

* * * * * * *

The following statements relative to the importation, use and regulation of pepper are known to the affiant to be true:

1. In the United States there are approximately 85 brokers and agents handling pepper, approximately 56 dealers handling pepper and 107 grinders or packers. The dealers normally import stocks of pepper, the brokers and agents are middlemen in the sale of pepper to grinders or packers, and the grinders and packers process the whole pepper into ground pepper, pack it in suitable containers and sell it to the various consumers of ground pepper including meat packers and other food processors.

* * * * * * *

[fol. 210] 5. The various governmental orders have required inventory reports at periodic intervals. On July 1, 1943, these reports disclosed a total supply of pepper in the United States of 47,660,000 pounds of which 29,665,000 pounds was in the hands of dealers and other holders of black pepper and 17,995,000 pounds was in the hands of packers and grinders. On January 1, 1944, there was a total stock of 41,909,000 pounds of which 28,211,000 pounds was in the hands of other holders and 13,698,000 was in the hands of

packers and grinders.* Beginning in the Spring of 1943, pepper ceased to move into normal trade channels out of the hands of certain holders of pepper for investment. Because of its relative indestructibility and wide price fluctuations in normal times, pepper has often been purchased by commodity speculators and other persons interested in making a profit in dealing in the commodity but not in processing it for sale to consumers. Those persons ceased to sell pepper beginning in 1943. It is believed that this refusal to sell was caused by action of the Office of Price Administration in fixing the base price of whole black pepper at 6½ cents per pound ex dock New York, N. Y., a price considered by investors as too low.

* * * * * * *

[fol. 211] 6. In July 1943, the War Food Administration was required to supply the Government of the Union Socialist Soviet Republic with 250 tons of whole black pepper under the Lend-Lease Act. The War Food Administrator received no response to invitations to bid. After considerable time and effort, and largely as a result of affiant's personal appeals to the various holders, this quantity was purchased from eight holders including three foreign owned lots. All of these sellers indicated that the sale was made unwillingly and under protest and that the War Food Administration could not expect to secure other stocks of pepper from them at the ceiling prices as they then and now are fixed.

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* Of the 26,211,000 pounds in the hands of dealers and other holders on January 1, 1944, approximately 16,000,000 pounds were held by Commodities Trading Corp.

[fol. 212] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

AFFIDAVIT OF RALPH W. OLMSTEAD, BEING A PART OF JOINT EXHIBIT "K", PARAGRAPH 15 OF STIPULATION OF FACTS

Civil Action No. 23573

COMMODITIES TRADING CORPORATION, a Delaware Corporation, 80 Broad Street, New York City, New York, Plaintiff,

against

FEDERAL SURPLUS COMMODITIES CORPORATION; CLAUDE R. WICKARD, Individually and as Secretary of Agriculture; Marvin Jones, Individually and as War Food Administrator; Lee Marshall, Individually and as Director of Supply, Office of Distribution, War Food Administration, Ralph W. Olmstead, Individually and as Deputy Director of Supply, Office of Distribution, War Food Administration; Fletcher H. Long, Individually and as Chief of Spice Section of Special Commodities Branch of War Food Administration; H. C. Albin, Individually and as Chief of Special Commodities Branch of War Food Administration; and Irving Trust Company, Defendants

AFFIDAVIT

DISTRICT OF COLUMBIA,
City of Washington, ss.

Ralph W. Olmstead, being first duly sworn, deposes and says that he is and at all times has been since December 1942 the Deputy Director of the Office of Distribution (formerly known as the Food Distribution Administration) of [fol. 213] the War Food Administration in the United States Department of Agriculture; that as such Deputy Director his duties include supervising and directing the procurement of all foodstuffs by the Office of Distribution; that he is also chairman of the Inter-Agency Food Procurement Committee set up to coordinate the food procurement activities of all Government agencies including among others the War Department, Navy Department, War Shipping Administration, Foreign Economic Administration and Veterans Administration; that he is familiar with the governmental requirements for foodstuffs, including pepper; that

early in 1944 it became apparent to him that although there were stocks of raw pepper in the United States, this pepper was not moving through channels of distribution; that the pepper requirements of the Armed Forces of the United States were not being met; that the pepper presently needed by civilians in the United States for use both in the household and in connection with the preservation of meat and meat products was not available to the consumers thereof; that, therefore, on February 11, 1944 he approved a proposal by the Office of Distribution to requisition 22,000,000 pounds of whole natural black pepper and 1,000,000 pounds of natural white pepper for the purpose of meeting these requirements essential to the defense of the United States; [fol. 214] that on February 11, 1944 the proposal signed by him was approved by Mr. Lee Marshall, Director of Distribution, acting for the War Food Administrator, and that in so approving, Mr. Lee Marshall made the findings required by the Act of October 16, 1941; that attached hereto are properly certified copies of the proposal approved by this affiant and by Mr. Lee Marshall and that also attached hereto is certified copy of a memorandum addressed to this affiant by the Chief of the Civilian Requirements Branch of the Office of Distribution and the Chief of the Special Commodities Branch of the Office of Distribution, in which this action was recommended; * * *"

[fol. 215] PLAINTIFFS' EXHIBIT NO. 5 FOR IDENTIFICATION

Contract No.: A1PM (FS) 1576.
Contract Date: November 16, 1946.

UNITED STATES DEPARTMENT OF AGRICULTURE
Commodity Credit Corporation
Special Commodities Branch
Washington 25, D. C.

Edward L. Blackman,
120 Broadway,
New York, N. Y.

GENTLEMEN:

The Commodity Credit Corporation has this day allocated to you the quantity of Whole Black Malabar Pepper

shown below, which you may purchase upon the following terms and conditions:

Commodity: Whole Black Malabar Pepper from India.

Quantity and Description: Approximately 4200 net pounds (30 heavy single bags of approximately 143 pounds gross each). Standard tare allowance 2% of gross weight.

Quality: Commodity is sold in store New York Dock Co., Erie Basin, Brooklyn, N. Y. "As Is" without warranty express or implied as to quantity, quality or condition except that the commodity is fit for human consumption.

Price: $0.75 per pound net, in the store present location.

Transfer of Title: Title to the commodity will pass to the purchaser in store present location at the close of business of the fifteenth day following the issuance to the warehouse by CCC of the Notice to Release or at the time purchaser takes actual possession, whichever is earlier. A copy of the notice will be mailed to Purchaser at the same time notice is sent to warehouse. The Notice to Release will be issued as soon as possible after receipt of payment.

Payment: Purchaser will transmit immediately original and four properly executed copies of this contract, together with certified or cashier's check payable to "commodity Credit Corporation" in the amount of $3150.00 representing value of full approximate contracted quantity, to E. P. Connette, 150 Broadway, New York, N. Y.

Telegraphic Acceptance: Purchaser will telegraph acceptance to Mr. E. P. Connette, 150 Broadway, New York, N. Y. before 5:00 P. M. (at the time zone applicable to address [fol. 216] of purchaser) November 18, 1946 in addition to forwarding of the original and four copies required in payment provision hereof. If telegraphic acceptance is not filed as prescribed herein CCC reserves the right to make other disposal of the above quantity.

Adjustment: Final settlement will be made against certified weighmaster's certificate procured at expense of CCC indicating delivered weights. Claims of any nature must be presented by either party within 60 days after date of acceptance. All storage or other charges accruing after passage of title shall be for account of purchaser.

Commodity Credit Corporation, by L. Thornton Davis, Contracting Officer.

The acceptance of this allocation and required telegraphic acceptance will constitute a valid and binding contract with the Commodity Credit Corporation.

Accepted:

Name of Firm: .....
By: .....
Title: .....

[fol. 217] EXTRACTS FROM DEFENDANT'S EXHIBIT No. 5

UNITED STATES OF AMERICA, OFFICE OF PRICE ADMINISTRATION, WASHINGTON, D. C.

In the Matter of the Petition of COMMODITIES TRADING CORPORATION for Adjustment of Price Schedule No. 52 Relating to Pepper

PETITION FOR ADJUSTMENT

1. The petition herein is filed pursuant to Procedural Regulation No. 1 and relates to Price Schedule No. 52, fixing maximum prices for pepper (issued originally on December 11, 1941, amended February 2, 1942, March 10, 1942, March 16, 1942, August 12, 1942 and November 2, 1942).

2. Petitioner's name and address is Commodities Trading Corporation, a corporation of the State of Delaware, having its principal office at No. 80 Broad Street, Borough of Manhattan, City and State of New York.

3. Petitioner's business is, and has been, the buying of pepper and holding the same for investment.

It is not a dealer in pepper in the ordinary sense, but is an investor which began to purchase Black Pepper in 1933 [fol. 218] to *to* hold as an investment, principally because of the reduction of the gold content of the dollar, and the announced intention of the Federal Government in 1933 to force a decrease in the purchasing price of the dollar and a consequent increase in price levels, and because of the fact that due to the lasting quality of pepper, and the definite cycles of low and high prices to which it has been subject for 75 years, it was a practical certainty that any

one buying at the prices paid by petitioner could sell at a profit if he held on sufficiently long, regardless of changes of price due to the reduction of the gold content of the dollar.

Petitioner's purchases were to a large extent hedges against the anticipated decrease in the purchasing power of bonds held by its stockholders.

In furtherance of its above-stated object, this company since 1933 has purchased pepper from time to time and has sold from time to time, but for periods of many months it neither bought nor sold and much of the black pepper which it has on hand today has been held for several years in storage in warehouses in the United States and has been the source of warehouse and other carrying charges. By 1939 it accumulated over 25,000,000 pounds of Lampong Black Pepper and its dealings were largely responsible for the fact that the beginning of the War found this country in the fortunate position of having more than ten times as much pepper in storage than was usual during the years prior to this company's operations.

[fol. 219] 4. Petitioner desires and requests that Price Schedule No. 52, a copy of which is hereto attached, marked Exhibit "A" and made a part hereof, be adjusted so as to permit petitioner to charge 10¢ per pound instead of the price of 6.50¢ for its Whole Lampong Black Pepper and its Whole Black Pepper of similar grades.

5. The following are the facts, which, in the opinion of the petitioner, make the proposed adjustment set out in Paragraph 4 hereof appropriate and necessary:

(a) As above stated, petitioner is not a dealer in pepper, but is an investor, and purchased its pepper with the intent of carrying an inventory of upwards of 15,000,000 pounds for a number of years. It has never been identified with the spice or pepper trade, has never joined any associations, has never had any definite customers, has always been regarded by the pepper trade as an anomaly and an outsider, and its inventory has never been regarded in the trade as a part of the general pepper supply of the country. The ceiling price of 6.50¢ per pound is much below the cost of petitioner's investment, but until October last, it made no effort to secure any increase in the ceiling

price, and was not interested therein, as it desired to continue to hold its pepper, and it was only when it was informed that pepper was becoming scarce that it considered that it would part with its pepper in the public interest, if it could do so at a price that would not entail a loss; and this application is made because [fol. 220] it has been represented to petitioner that a very serious situation exists in the spice industry; that any dealers in spices are completely out of pepper and that they are in danger of losing their businesses because purchasers will not buy any of the whole line of spices unless the seller can supply pepper. Thus, petitioner is informed that a monopoly is being built up in favor of a few large dealers who have pepper, at the expense of the many smaller ones who have no pepper.

Petitioner is further informed that the scarcity of pepper has proceeded to such a point that housewives find it difficult to purchase their domestic supplies.

Petitioner has obtained a temporary injunction, restraining members of the War Food Administration from requisitioning its pepper, and has obtained a decision from the United States District Court for the District of Washington, D. C., that it was not the intent of Congress to confer upon the administration the power to requisition plaintiff's pepper for civilian use. Petitioner is informed and believes that in most of — countries of the world where there is no restriction on the price of pepper it is selling for 40¢ a pound and more, and that in England, where there is a ceiling price of approximately 20¢ it is difficult to obtain pepper at that price.

[fol. 221] There seems to be an emergency, and petitioner is willing to go much more than half-way to assist the public authorities in meeting such emergency, and is willing to sell its pepper at 10¢ per pound, which is the approximate actual investment which petitioner now has in the pepper which it now owns and which is less than half of what it considers is the fair and reasonable value thereof, and the amount which it should receive as just compensation in case of requisition.

(b) The proposed adjustment will not affect the cost of living or the price at which pepper is sold to the consumer.

About 60% of the entire consumption of black pepper is home or restaurant consumption, the remaining 40% being consumed by processors in the making of sausages and other meat products. The pepper which is consumed in the home is most of it sold by retailers in small containers holding 1, 1½, or 2 ounces and such average per capita consumption is less than six ounces per year.

The prices at which such retail sales are made vary, but in most cases, including some important chain stores, the price was 5¢ an ounce.

The quantity of pepper in such small containers is so small and its cost so little that fluctuations in the price of pepper have had little or no effect upon the price at which such containers have been sold at retail. Thus, during the period of 7 years preceding Pearl Harbor, the wholesale price of Lampong Pepper rose to 13¢ per pound and fell to about 3¢, but there was little change in the price to the public of the small containers.

[fol. 222] The maximum increase in selling price under the proposed adjustment would increase the cost of the pepper in the household package about ¼¢, and as the cost of the container, the cost of grinding, packing, handling, cartage, freight, etc. forms so large a part of the cost of the packer who sells to the retailer the increase of ¼¢ need have no appreciable effect upon the selling price to the public.

With respect to pepper sold at restaurants and hotels, the amount consumed with each meal is so infinitesimal that the entire cost of the pepper included in the meal cannot be found.

With respect to the pepper sold to processors, the amount of pepper used does not exceed 6 ounces per 100 pounds of meat product with which it is used, or approximately 2¢ per hundred pounds, and the margin of profit on such meat products is sufficiently large so that the processor can absorb such infinitesimal increase in cost and not pass the same on to the public.

(c) Petitioner believes that the ceiling price originally fixed for Whole Black Pepper was much too low and was made without knowledge or consideration of many important factors. These matters are contained in the petition of this company for an amendment of Regulation 52, permitting the addition of storage charges to the ceiling price

of 6.50¢ per pound, which said petition was filed on or about October 1st, 1943, and in the application of this company, pursuant to Procedural Regulation No. 6, for permission to accept the offer of the United States Army to purchase 1,000,000 pounds of Whole Black Pepper at 9¾¢ per pound, made in November, 1943, and will not be repeated here. In this application, petitioner wishes to show that so far as the [fol. 223] supply of Whole Black Pepper is concerned, its holdings are upwards of three-fourths of those now held by all importers and bulk dealers and that it is fair and reasonable that an adjustment should be made in keeping with the costs of this company, as it is practically the sole source of supply. Petitioner's costs were developed in detail in connection with various applications of this company to the Office of Price Administration in the Fall and Winter of 1943. This company has made no sales since those figures were developed and the only change in its investment is that it has incurred storage and carrying charges for additional months. The investment of this company on May 31st, 1943 in the pepper which it then had on hand is shown in detail in the attached schedule, marked Exhibit "1". This shows a total stock of 17,249,018 pounds of Whole Black Pepper of Lampong or equal grade, at a total purchase price, exclusive of carrying charges, of $1,150,501.39, which is slightly more than 6¢ per pound.

The pepper now on hand has the same average purchase price, exclusive of the carrying charge.

However, petitioner has carried the identical pepper above referred to in warehouses in the United States for an average of approximately 8 years at an approximate cost for storage and other carrying charges of ½¢ per pound per year, so that petitioner's total investment in its said pepper is approximately 10¢ per pound.

Petitioner now has on hand upwards of 15,000,000 pounds of said Whole Black Pepper. The reduction from the figures above stated are due to requisitions by the United States [fol. 224] Army and the United States Navy. These requisitions, however, do not change the above investment figures as the lots requisitioned had the average purchase price above stated and had been on storage for the average number of months above stated.

Wherefore, Petitioner respectfully requests that said Regulation No. 53 or the application thereof to Petitioner,

be adjusted so that the maximum price for pepper stated in subdivision (b) thereof shall read:

	"Cents per pound ex dock New York City
"Lampong Black Pepper	$10.00"

Dated, New York, August 16, 1944.
Commodities Trading Corporation by (Sgd.) William T. Hunter, President.

[fol. 225] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1949

No. 156

ORDER ALLOWING CERTIORARI—Filed October 24, 1949

The petition herein for a writ of certiorari to the United States Court of Claims is granted. The case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Douglas took no part in the consideration or decision of this application.

[fol. 226] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1949

No. 163

ORDER ALLOWING CERTIORARI—Filed October 24, 1949

The petition herein for a writ of certiorari to the United States Court of Claims is granted. The case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied

the petition shall be treated as though filed in response to such writ.

Mr. Justice Douglas took no part in the consideration or decision of this application.

[fol. 227] IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1949

No. 156

No. 163

[Titles omitted]

STIPULATION AS TO PRINTING RECORD—Filed November 10, 1949

Subject to this Court's approval, it is hereby stipulated and agreed by and between counsel for the respective parties hereto that, for the purpose of the hearing on the merits, the printed record may, in addition to the record printed for the purposes of the petitions for writs of certiorari, consist of the following:

1. Defendant's Designation of Additional Parts of the Record, consisting of excerpts from the testimony of Murray Squires and Defendant's Exhibit No. 3.

2. The following excerpts from Plaintiffs' Designation of Additional Portions of the Record:

a. Testimony of Isidor B. Katz.

i. From the beginning of p. 1 of the Transcript through A to Q. 2.

ii. Answer to Q. 6.

[fol. 228] iii. Answer to Q. 7.

iv. Q. 12 through and including A to Q. 22.

v. Q. 33 through and including A to Q. 34.

vi. Q. 36 through and including A to Q. 39.

vii. Q. 60 through and including A to Q. 66.

viii. Q. 76 and answer.

ix. Q. 81 through and including A to Q. 83.

x. Q. 88 through and including A to Q. 162.

xi. Q. 165 through and including A to Q. 178.

xii. Q. 181 through and including A to Q. 193.
xiii. Q. 196 through and including A to Q. 199.
xiv. Q. 201 through and including A to Q. 208.
xv. Q. 211 through and including A to Q. 212.

b. Testimony of William T. Hunter.

i. From the beginning through and including A to Q. 10.
ii. Q. 13 through and including A to Q. 19.
iii. Q. 34 through and including A to Q. 37.
iv. X Q. 93 through and including A to X Q. 105.

c. Continuation of examination of Mr. Katz.

i. Q. 215 through and including A to Q. 227.
ii. Commissioner's Q following Q. 233 through and including "I respectfully except" on p. 126.
iii. X Q. 234 through and including A to X Q. 287.
iv. X Q. 298 through and including A to X Q. 305.
v. X Q. 309 through and including answer to X Q. 310.
vi. Colloquy between Commissioner and Witness following X Q. 331 through and including answer to X Q. 338.
vii. X Q. 341 through and including A to X Q. 423.
viii. R D Q. 429 through and including answer to R D Q. 431.
ix. R D Q. 439 through and including answer to R D Q. 442.
x. R D Q. 451 through and including A to R D Q. 499.
xi. R D Q. 502 through and including A to R D Q. 503.

[fol. 229] d. Testimony of William Archibald.

i. From the beginning through answer to Q. 15.
ii. Last lines on p. 87 beginning "I was Secretary" through to the end of that paragraph.
iii. Q. 19 through and including A to Q. 24.
iv. Q. 29 through and including A to R D Q. 122.
v. Q. 32 through and including A to R D Q. 96.
vi. R D Q. 100 and answer.

e. Testimony of Mrs. Corbitt.

i. From beginning through A to Q. 33.
ii. Q. 26 through and including answer to Q. 42.
iii. Q. 45 to the end of Mrs. Corbitt's testimony.

f. Testimony of Mr. Greisheimer.

i. From beginning to A to Q. 30.
ii. From Q. 42 through and including A to Q. 50.

iii. From Q. 73 through and including A to Q. 95.
iv. From 108 through and including A to Q. 155.

g. Testimony of Murray Squires.

i. Q. 31 through and including A to Q. 32.
ii. Q. 92 through and including Q. 105.
iii. Q. 140 through and including A to Q. 141.
iv. Q. 145 through and including A to Q. 158.
v. Q. 180 through and including A to Q. 194.
vi. Q. 201 through and including A to Q. 217.
vii. Q. 249 through and including A to Q. 255.
viii. Q. 257 through and including A to Q. 266.
ix. Q. 272 through and including A to Q. 274.

h. Testimony of Mr. Konvalinka.

i. From beginning to A to Q. 22.
ii. Q. 24 through to the A to Q. 27.

i. All of pages 181 through and including p. 186.

j. P. 187 commencing "now pursuant to our stipulation" to and including "to which we have referred."

k. P. 188 commencing with "Commissioner Gyles. I do not want" to and including P. 189 ending with "Mr. Barnes. I admit."

l. P. 190, commencing with "Mr. Blackman, I offer in evidence" to and including all of p. 193.

m. P. 197 beginning "Mr. Barnes I would like now" to and including the end of p. 224.

[fol. 230] 3. This stipulation.

It is further stipulated and agreed that either of the parties hereto may refer in its brief to the record filed in the Supreme Court of the United States, including any part thereof which has not been printed.

Philip B. Perlman, Solicitor General, Counsel for the United States; Edward L. Blackman, Counsel for Commodities Trading Corporation, et al.

[fol. 231] [File endrosement omitted.]